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20792
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 532.

THE ST. LOUIS SOUTHWESTERN RAILWAY COMPANY,
ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY
ET AL., APPELLANTS,

vs.

THE UNITED STATES AND INTERSTATE COMMERCE
COMMISSION.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE WESTERN DISTRICT OF KENTUCKY.

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1 *Citation. Issued June 7, 1916.*

Evans, Judge.

UNITED STATES OF AMERICA,
 Western District of Kentucky,
 Sixth Judicial Circuit, ss:

To United States of America and Interstate Commerce Commission,
Greeting:

You are hereby cited and admonished to be and appear at a session of the Supreme Court of the United States, to be holden at the City of Washington, D. C., on the 26th day of June next, pursuant to a Petition for Appeal filed in the Clerk's office of the District Court of the United States for the Western District of Kentucky, wherein The St. Louis Southwestern Railway Company; St. Louis, Iron Mountain & Southern Railway; The Chicago, Rock Island and Pacific Railway and Louisiana & Arkansas Railway are the appellants, and you are the appellee, to show cause, if any there be, why the Decree rendered against the appellants, as in the said Petition for Appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward D. White, Chief-Justice of the United States, this 7th day of June, in the year of our Lord one thousand nine hundred and sixteen, and of the Independence of the United States of America the one hundred and fortieth.

 WALTER EVANS,
 Judge of the District Court of the United States
 for the Western District of Kentucky.

2 *Petition for Appeal. Filed June 7, 1916.*

In the District Court of the United States for the Western District of
 Kentucky.

In Equity. No. 33.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY; ST. LOUIS, IRON
Mountain & Southern Railway Company, and the Chicago, Rock
Island & Pacific Railway Company, Petitioners; and Louisiana &
Arkansas Railway Company, Intervening Petitioner,

vs.

UNITED STATES OF AMERICA, Respondent, and INTERSTATE COM-
MERCE COMMISSION, Intervening Respondent.

To the Honorable Judges of the District Court of the United States
for the Western District of Kentucky:

St. Louis Southwestern Railway Company; St. Louis, Iron Moun-
tain & Southern Railway Company, and The Chicago, Rock Island &

Pacific Railway Company, petitioners, and Louisiana & Arkansas Railway Company, intervening petitioner in the above entitled cause, conceiving themselves aggrieved by the decree rendered and entered in said cause on the 13th day of May, A. D. 1916, do hereby appeal from said decree to the Supreme Court of the United States for the reasons set forth in the assignment of errors filed herewith; and pray that their appeal be allowed, that citation be issued as provided by law, and that a transcript of the record, proceedings and documents upon which said decree was based, duly authenticated, be transmitted to the Supreme Court of the United States, under the rules of said court in such cases made and provided.

And your petitioners pray that proper order relating to the security to be required of them, be made.

EDW. A. HAID,
A. L. BURFORD,
W. F. DICKINSON,
HENRY G. HERBEL,
HENRY MOORE,

Solicitors for said Petitioners.

3

TRANSCRIPT OF RECORD.

Proceedings of the District Court of the United States for the Western District of Kentucky, at a Regular Term Begun and Held at the Federal Court Hall, in the City of Louisville, on Monday, March 13th, 1916.

Present: Honorable John W. Warrington, Judge United States Circuit Court of Appeals, Sixth Judicial Circuit; Honorable Howard C. Hollister, Judge United States District Court for the Southern District of Ohio; Honorable Walter Evans, Judge United States District Court for the Western District of Kentucky.

In Equity. No. 33.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY; ST. LOUIS, IRON Mountain & Southern Railway, the Chicago, Rock Island & Pacific Railway, Petitioners; and Louisiana & Arkansas Railway, Intervening Petitioner,

vs.

UNITED STATES OF AMERICA, Respondent, and INTERSTATE COMMERCE COMMISSION, Intervening Respondent.

Be it remembered that heretofore, to-wit, on the 15th day of March, 1916, came the Petitioners by counsel and filed in the Clerk's office of our said Court their Petition for Injunction in the above entitled cause.

4

The Petition for Injunction referred to is as follows:

5 In the District Court of the United States for the Western District of Kentucky.

No. 33.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, a Corporation;
St. Louis, Iron Mountain & Southern Railway Company, a Corporation, and the Chicago, Rock Island & Pacific Railway Company, a Corporation, Petitioners,

vs.

UNITED STATES OF AMERICA, Respondent.

Petition for Injunction.

To the Honorable Judges of the District Court of the United States for the Western District of Kentucky:

Your petitioners, St. Louis Southwestern Railway Company; St. Louis, Iron Mountain & Southern Railway Company, and The Chicago, Rock Island & Pacific Railway Company, bring this, their petition, against the United States of America, and thereupon, complaining, say:

I.

Petitioner, St. Louis Southwestern Railway Company, is a railroad corporation organized and existing under and by virtue of the laws of the State of Missouri; petitioner, St. Louis, Iron Mountain & Southern Railway Company, is a railroad corporation organized and existing under and by virtue of the laws of the States of Missouri and Arkansas; and petitioner, The Chicago, Rock Island & Pacific Railway Company, is a corporation organized and existing under and by virtue of the laws of the States of Illinois and Iowa.

6

II.

Petitioners are, and at all times herein referred to were respectively, common carriers engaged in the transportation of persons and property from the States of Louisiana and Arkansas and other States to the States of Tennessee, Missouri, Illinois and other States, and, as such, are subject to, and have in all respects complied with the provisions of an Act of Congress of the United States entitled "An Act to Regulate Commerce," approved February 4, 1887, and the acts amendatory thereof and supplementary thereto, and have in all respects complied with the lawful orders, rules and regulations of the Interstate Commerce Commission.

III.

Petitioners allege that on or about the 8th day of February, 1915, there was filed with the Interstate Commerce Commission by Padu-

cah Board of Trade, a corporation organized and existing under the laws of the State of Kentucky, a petition setting forth in substance that—

“Paducah, Ky., is on the south bank of the Ohio River, and is a jobbing and manufacturing city and does a large business in buying, selling, rehandling and manufacturing lumber and lumber commodities, and is a large shipper of lumber and lumber commodities made from hardwood lumbers, pine and cottonwood and gum. That the principal competitors of the lumber merchants and manufacturers of Paducah are located at Cairo, Ill., a City located on the north bank of the Ohio River about 40 miles from Paducah, and that both Cairo and Paducah obtain a large part of their supply of lumber from the producing territory west of the Mississippi River in the States of Louisiana and Arkansas, and that the rates maintained by defendants (petitioners herein) on lumber and lumber commodities from said territory to Paducah, Ky., are from 2 to 6 cents higher than the rates contemporaneously maintained by defendants to Cairo, Ill.”

Complainant further alleged in substance that the rates maintained by petitioners herein

“on logs and lumber in carloads to Paducah from producing points in Louisiana and Arkansas, on and south of The Chicago, Rock Island & Pacific Railroad from Memphis, Tenn., to
7 Little Rock, Ark., and including Des Arc, Ark., are unjust, unreasonable and discriminatory, and give to Cairo, Ill., an undue preference and advantage and subject Paducah, Ky., to an undue prejudice and disadvantage; that the route from said producing points to Paducah, Ky., via Cairo, Ill., is unduly *long* as compared with the route from said producing points to Paducah via Memphis, Tenn., and that through routes and joint rates should be established, from said producing points to Paducah, Ky., via Memphis, Tenn., and joint rates should be established via said route which do not exceed the rates contemporaneously maintained from said producing points to Cairo, Ill.”

Complainant, therefore, prayed for the establishment of

“through routes and joint rates for shipments of logs and lumber to Paducah, Ky., from points in the States of Louisiana and Arkansas on and south of the line of The Chicago, Rock Island & Pacific Railway from Memphis, Tenn., to Little Rock, Ark., and including Des Arc, Ark., via Memphis, Tenn., with joint rates via said routes which shall not exceed the rates contemporaneously charged for the transportation of logs and lumber from the same points to Cairo, Ill.”

IV.

Petitioners and the other carriers respondent in said cause (which was numbered by the Interstate Commerce Commission 7736) filed answers denying the allegations of said petition. Thereafter on,

to-wit, the 24th day of May, 1915, a hearing was had by the Interstate Commerce Commission in said cause and testimony introduced, and subsequently said cause was submitted to the Interstate Commerce Commission on briefs and oral arguments on, to-wit, the 30th day of October, 1915.

V.

On the 21st day of January, 1916, the Interstate Commerce Commission made its report in said cause (copy of which is herewith filed and made a part hereof, and marked Exhibit "A"), and entered an order that

8 "the above-named defendants, insofar as they participate in the traffic, be, and they are hereby, notified and required to cease and desist, on or before March 20, 1916, and thereafter to abstain, from publishing, demanding or collecting their present rates for transportation of logs and lumber to Paducah, Ky., from points or groups in Arkansas and Louisiana west of the Mississippi River on and south of the line of The Chicago, Rock Island & Pacific Railway from Memphis to Little Rock, Ark., including Des Arc, Ark., which rates have been found in and by said report of the Commission to be unreasonable and unjustly discriminatory.

"It is further ordered that said defendants be, and they are hereby, notified and required to establish, on or before March 20, 1916, upon notice to the Interstate Commerce Commission and to the general public by not less than five (5) days' filing and posting in the manner prescribed in Section 6 of the Act to Regulate Commerce, and thereafter to maintain through routes for the transportation of logs and lumber via Cairo, Ill., or Memphis, Tenn., to Paducah, Ky., from points or groups in Arkansas and Louisiana west of the Mississippi River, and south of the line of The Chicago, Rock Island & Pacific Railway from Memphis, Tenn., to Little Rock, Ark., including Des Arc, Ark., and to establish and maintain joint rates to Paducah, Ky., applicable via such through routes, not in excess of the rates at present in effect from the same points or groups to Cairo, Ill."

That thereafter, to-wit, on or about the 11th day of March, 1916, the Interstate Commerce Commission entered a supplemental order in said cause postponing the effective date of its said order of January 21, 1916, to the 15th day of April, 1916.

VI.

Petitioners respectfully aver that said order of the Interstate Commerce Commission was and is void for the following reasons:

(1). The Commission by its said order attempts to establish joint rates less in amount than the present combination of rates, although it has not found the present combination of rates to be unreasonably high.

(2). There was no evidence before the Interstate Commerce Com-

mission from which it could find the present combination of rates to be unreasonably high.

(3). In determining whether "the present rates to Paducah are unjustly discriminatory and give an undue preference to Cairo," the Commission failed to consider the dissimilarity of conditions under which freight is transported and rates made to Cairo and Paducah respectively.

9 (4). There was no evidence before the Commission to sustain a finding that the present combination of rates makes or gives an undue or unreasonable preference or advantage to Cairo.

(5.) The Commission is without authority to find petitioners guilty of discriminating against a point which they do not serve with their own rails, and to which they publish no joint through rates.

(6.) Said order of the Commission is not responsive to the prayer of the complaint.

(7). The prayer of the complaint being for the establishment of through routes and joint rates via Memphis, the Commission was without jurisdiction to enter an alternative order as it attempted to do.

(8). The Commission is without jurisdiction to establish through routes and joint rates over the lines of petitioners, St. Louis Southwestern Railway Company and St. Louis, Iron Mountain & Southern Railway Company, via Memphis in the absence of a finding that the routes via Cairo are unreasonably long.

(9). There was no evidence before the Commission from which it could find that routes over the lines of petitioners, St. Louis Southwestern Railway Company, or St. Louis, Iron Mountain & Southern Railway Company via Cairo are unreasonably long.

(10). The Commission has not designated the carrier to the through routes ordered by it, between Memphis and Paducah.

(11). The Commission is without authority to order through routes via all lines operating between Memphis and Paducah.

(12). There was no evidence before the Commission bearing upon the constructive mileage of the bridge at Cairo.

(13). The Commission is without authority to take into consideration the constructive mileage of a bridge in determining the reasonableness of a route.

(14). There was no evidence to support the finding of the Commission that the present Cairo rate would be a reasonable rate for the transportation of lumber and logs to Paducah.

(15). There was no evidence before the Commission justifying the establishment of through routes and joint rates.

10 (16). The order of the Commission amounts to confiscation, and is, therefore, in violation of the Fifth Amendment to the Constitution of the United States.

VII.

Petitioners further allege that unless a temporary restraining order be issued, as hereinafter prayed, petitioners will, on and after

the effective date of said order of the Interstate Commerce Commission, be required to charge and collect for the transportation of logs and lumber to Paducah, the rates prescribed therein, which rates petitioners allege were prescribed by the Commission without lawful authority, are unreasonably low, and, in effect, confiscate petitioners' property; petitioners allege that they have no adequate remedy at law in the premises, and will suffer irreparable injury unless such temporary restraining order be issued.

Wherefore, petitioners pray that due service of this petition be made on respondent herein, commanding it to answer the matter hereof (but not under oath, answer under oath being expressly waived); that notice of the application for temporary restraining order hereby made be duly served on the respondent, on the Attorney-General of the United States, and on the Interstate Commerce Commission; that an immediate order restraining the enforcement of said order of the Interstate Commerce Commission be made, and an order of temporary injunction restraining the enforcement of said order of the Interstate Commerce Commission pending final hearing of this cause be entered, and that on such final hearing the said orders of the said Interstate Commerce Commission be in all things enjoined and set aside and held for naught; and that the Interstate Commerce Commission, its members, agents, attorneys, servants and representatives, be forever enjoined from enforcing said order, or taking any steps or instituting any proceedings for the enforcement thereof; and petitioners pray for general and
11 special relief as the equities of the case may warrant.

ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY,

By EDW. A. HAID,

A. L. BURFORD, *Its Attorneys*;

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RY. CO.,

By HENRY G. HERBEL &

FRED G. WRIGHT, *Its Attorneys*;

THE CHICAGO, ROCK ISLAND & PACIFIC RY. CO.,

By W. F. DICKINSON, *Its Attorney*.

STATE OF MISSOURI,

City of St. Louis, ss:

W. A. Rambach, of lawful age, being first duly sworn, deposes and says that he is Asst. Freight Traffic Manager of St. Louis, Iron Mountain & Southern Railway Company, one of the petitioners in the foregoing petition; that he has read the same, knows the contents thereof, and that the averments thereof are true, partly of his own knowledge and partly on information and belief, and that he verily believes each averment thereof to be true.

W. A. RAMBACH.

Subscribed and sworn to before me this 14th day of March, A. D. 1916.

[SEAL.]

MARTHA HARRIS,
Notary Public.

My commission expires Sept. 14, 1919.

STATE OF MISSOURI,
City of St. Louis, ss:

12 Mr. J. P. Park, of lawful age, being first duly sworn, deposes and says that he is General Freight Agent of St. Louis Southwestern Railway Company, one of the petitioners named in the foregoing petition; that he has read the same, knows the contents thereof, and that the averments thereof are true, partly of his own knowledge and partly on information and belief, and that he verily believes each averment thereof to be true.

J. P. PARK.

Subscribed and sworn to before me this 14th day of March, A. D. 1916.

[SEAL.]

JAMES R. VAUGHAN,
Notary Public.

My commission expires Nov. 6, 1919.

13

(EXHIBIT A.)

Interstate Commerce Commission.

No. 7736.

PADUCAH BOARD OF TRADE

v.

ILLINOIS CENTRAL RAILROAD COMPANY, et al.

Submitted October 30, 1915. Decided January 21, 1916.

Upon complaint that the rates on logs and lumber to Paducah, Ky., from points in Louisiana and Arkansas are unreasonable and unjustly discriminatory as compared with the rates from the same producing territory to Cairo, Ill.; Held:

1. The rates to Paducah are shown to be unreasonable.

2. The rates to Paducah are shown to be unjustly discriminatory as compared with the rates to Cairo. Defendants required to establish joint rates to Paducah via either Cairo, Ill., or Memphis, Tenn., not in excess of the rates contemporaneously maintained to Cairo. Findings in Paducah Board of Trade v. I. C. R. R. Co., 29 I. C. C., 583, affirmed.

J. V. Norman for complainant.

Charles Rixey, Jr., for Illinois Central Railroad Company.

E. A. Haid, A. L. Burford, H. G. Herbel, F. G. Wright, and W. F. Dickinson, for other defendants.

F. M. Ducker and Ray Williams for Cairo Association of Commerce, intervener.

Report of the Commission.

MEYER, Commissioner:

In Paducah Board of Trade v. I. C. R. R. Co., 29 I. C. C., 583, it was alleged, among other things, that the rates on logs and lumber to Paducah, Ky., from points in Arkansas and Louisiana on and south of the Memphis-Little Rock line of the Chicago, Rock Island & Pacific Railway were unreasonable and unjustly discriminatory as compared with the rates from the same producing territory to Cairo, Ill. The evidence in that case showed that the distances to Paducah from the points or origin via Memphis are less than the distances via Cairo. We said:

Since the complaint did not contain a specific request for the establishment of through routes and joint rates, we cannot order their establishment via Memphis. However, we believe that since the short-line distances from points west of the Mississippi and south of the line of the Chicago, Rock Island and Pacific from Memphis to Little Rock are not greater to Paducah than to Cairo, defendants should be required to establish from points or groups substantially equidistant from Cairo and Paducah rates to Paducah over the present routing, unless they elect to do so over the more direct route via Memphis, no higher than the rates contemporaneously maintained from the same points to Cairo.

21070-16. 37 I. C. C.

The rates to Paducah from points west of the river should not be lower than those to Cairo, because in hauling from west-side points to Paducah the Mississippi must be crossed as well as in hauling to Cairo. Under these requirements the St. Louis, Iron Mountain & Southern and the St. Louis Southwestern may haul lumber originating on their lines or their connections via Cairo if they so desire. The Chicago, Rock Island & Pacific will, of course, route its traffic as at present, via Memphis.

We find that defendants unduly discriminate against the dealers and manufacturers of lumber at Paducah to the undue preference and advantage of those located at Cairo by the maintenance of the rates on lumber at present in effect from the producing points herein involved. * * * The defendants who operate west of the Mississippi River will be required to maintain rates to Paducah from substantially equidistant points or groups in Arkansas and Louisiana west of the river, on and south of the line of the Chicago, Rock Island & Pacific from Memphis to Little Rock no higher than those contemporaneously maintained from the same points to Cairo.

Carriers will be expected by May 1, 1914, to revise their tariffs in accordance with the views expressed in this report. Pending such revision the case will be held open for such further proceedings and order as the Commission may deem necessary.

The complainant now alleges that "defendants have failed to even attempt to comply with said findings," and the Commission

is asked to require the defendants to establish through routes and joint rates from the points in question to Paducah not in excess of the rates contemporaneously maintained from the same points to Cairo. It is again alleged that the rates on lumber to Paducah are unreasonable and unjustly discriminatory. The Cairo Association of Commerce intervened.

Paducah is situated on the south bank of the Ohio River 42 miles east of Cairo. Its population is about 25,000. There are a number of manufacturers of lumber and wood articles at Paducah who compete with manufacturers located at Cairo. Cairo, whose population is approximately 17,000, is located at the extreme southern end of Illinois, at the confluence of the Mississippi River and the Ohio River. Both Paducah and Cairo obtain a part of their lumber from west of the Mississippi River. Most of the traffic from the lumber-producing territory west of the river to Paducah is handled through Cairo, and the Paducah rates are made by combination on Cairo, the rate from Cairo to Paducah being 6 cents per 100 pounds. The west-side lines do not reach Paducah, so that at least two carriers participate in the hauls from Arkansas and Louisiana points to Paducah.

The principal issue in the present case is, whether it is appropriate or lawful to require the defendants to establish through routes and joint rates to Paducah via Memphis. In the previous case we held that the Memphis route was the natural route for the movement of this traffic, but as the complaint did not contain a prayer for through routes, we did not require their establishment. The defendants earnestly insist, not only that the Memphis route is an unnatural one but that the Commission could not lawfully establish through routes and joint rates via that route. The latter

16 contention is based on that portion of Section 15 of the act to regulate commerce which provides that the Commission, in establishing a through route, shall not require any carrier, without its consent, to embrace therein substantially less than the entire length of its railroad lying between the termini of the through route unless to do so would make such through route unreasonably long as compared with another practicable route.

Three routes for hauling lumber from the points of origin to Paducah were discussed by the witnesses—the Bird's Point route, the Thebes route, and the Memphis route.

Until somewhat more than two years ago the Iron Mountain and the St. Louis Southwestern handled their traffic from the southwest through Bird's Point, Mo., from which a car ferry was operated to Cairo. An "incline" connected the tracks of the rail lines with the car ferry. More than two years ago this incline was washed away, and since that time these carriers have been unable, even with the assistance of government engineers, to find a point on the west bank of the river in this vicinity at which a similar incline can be permanently located. They therefore haul the traffic via Illmo, Mo., and Thebes, Ill., thence a distance of 28 miles over the tracks of the Chicago & Eastern Illinois Railroad and the Illinois Central Railroad to Cairo. The distance via the Bird's Point route *are*

approximately 30 miles less than the distance via Thebes, and the defendants insist that in determining the reasonableness or unreasonableness of the Memphis route the distances via Memphis should be compared with the distance via Bird's Point. There can be no question, however, of the impropriety of measuring distances over a route which has been closed for more than two years, especially since there is no prospect of its being reopened in the immediate future.

In the previous report we held that the distances to Paducah via Cairo are so much greater than the distances via Memphis
17 that "the natural route from the points west of the Mississippi here involved is via Memphis rather than via Cairo." Nothing appears in the present record to convince us that that finding should be modified.

Exhibits filed by the defendants show that the average distance to Paducah via Thebes from 10 representative points on the St. Louis Southwestern Railway is 381.3 miles, while the average distance from the same points via Memphis is 360.8 miles. From 12 typical points on the St. Louis, Iron Mountain & Southern Railway the average distance to Paducah via Memphis is 501 miles, as compared with 559 miles via Thebes. From 11 representative producing points on the Chicago, Rock Island & Pacific Railway the average distances via Memphis and Thebes are 501 miles and 544.6 miles, respectively. In computing these distances via Thebes, however, no allowance was made for the constructive mileage of the Cairo bridge. In our previous report we observed that in reaching Paducah via Thebes it is necessary to cross both the Mississippi River and the Ohio River, while only the former must be crossed if the Memphis route is used. In a number of recent cases the carriers have maintained that the bridges spanning these rivers, and especially the one at Cairo, are expensive, and that the cost of their construction and maintenance should be reflected in the rates. It is clear, at any rate, that in determining the relative reasonableness or practicability of two routes, the operating conditions are entitled to consideration. The principal defendants in this case were respondents in Rates on Lumber from Southern Points, 34 I. C. C., 652. It was shown by the respondents in that case that at some of the crossings it actually costs the carriers 2.1 cents per 100 pounds to haul lumber across the Ohio River; that the cost of the Cairo bridge, as of January 30, 1915, was \$3,731,852.47; and it was argued that in view of these facts the Commission should permit the respondents to increase their rates on lumber from points in the south to points located on the north bank of the Ohio River; and that "it is difficult to conceive upon what ground it could
18 be urged that the carriers should be required to absorb all bridge tolls in all directions at all crossings."

Two of the defendants, the St. Louis Southwestern Railway and the Chicago, Rock Island & Pacific Railway, maintain that it would be peculiarly unjust to them to require the establishment of through routes and joint rates via Memphis. The former carrier does not

reach Memphis with its own rails. A contract entered into several years ago by the St. Louis Southwestern and the St. Louis, Iron Mountain & Southern provides that the former shall deliver to the latter at Fair Oaks, Ark., all freight originating on the line of the former, or its connections, and consigned to or through Memphis. The contract also provides that the St. Louis, Iron Mountain & Southern shall receive 3 cents per 100 pounds for its haul from Fair Oaks to Memphis. The St. Louis Southwestern shows that a shipment originating, for example, at Winnfield, La., would move over the line of the Louisiana & Arkansas Railroad from Winnfield to Stamps, Ark., thence over the St. Louis Southwestern from Stamps to Fair Oaks, thence over the St. Louis, Iron Mountain & Southern from Fair Oaks to Memphis, and finally over the Illinois Central from Memphis to Paducah. The originating carrier, the Louisiana & Arkansas Railroad, at present receives a division of 7 cents per 100 pounds out of the through rate, the Iron Mountain 3 cents, and the Illinois Central 6 cents, a total of 16 cents. The St. Louis Southwestern points out that the present rate from Winnfield to Cairo is 16 cents, and that if the same rate were extended to Paducah that carrier would receive nothing for its haul from Stamps to Fair Oaks. The question of divisions, however, is not involved in this proceeding.

On behalf of the Chicago, Rock Island & Pacific Railway it is contended that its rates to Cairo are depressed by the severest competitive influences, and that since the same competition is not encountered at Paducah, it would be unjust to require this carrier to extend its Cairo rate to Paducah. The Rock Island, in compliance with our previous report, filed a tariff naming the same rates to Paducah as to Cairo, but that tariff was suspended in Rates 19 on Lumber from Southern Points, *supra*, and this defendant joins with the others in contending that Paducah is not entitled to the Cairo rates.

The Rock Island does not reach either Cairo or Paducah with its own rails. Its Cairo traffic may be turned over to the St. Louis & San Francisco Railroad at Bridge Junction, Ark., opposite Memphis, or to the Illinois Central at Memphis. Its Paducah traffic is turned over to the Illinois Central or the Nashville, Chattanooga & St. Louis at Memphis. The Rock Island serves a territory in Arkansas and Louisiana which is also reached by several other carriers, two of which have direct lines to Cairo. To compete for Cairo traffic it is necessary for the Rock Island, in conjunction with the St. Louis & San Francisco Railroad or the Illinois Central Railroad, to meet the rates to Cairo established by the direct lines, although the haul in which the Rock Island participates involves at least two lines and in many instances three lines. In view of these facts the Rock Island maintains that its rate to Cairo is depressed by competitive conditions which do not exist at Paducah, and that the rates to Paducah should, therefore, be higher than the rates to Cairo. This evidence was before us in the previous case and was again introduced by the respondents in Rates on Lumber from

Southern Points, *supra*. In the latter case, at pages 671 and 672, we said:

It is further urged on behalf of the southwestern respondents generally that the 16-cent rate to Cairo was made by lines which have a single line from the points of origin to that gateway, and that it would be manifestly unjust for this Commission to compel such a line as the Texas & Pacific, whose traffic cannot reach Cairo by a one-line haul, to continue the publication of the 16-cent rate to that point. Exhibits filed on behalf of the respondents, however, show that most of the lumber from the yellow-pine blanket moves to Cairo by two or more lines. It is shown that for six alternate months in 1911 and 1912 the total movement of yellow-pine lumber from the blanket to Cairo proper was 1,141 cars. Of this number only 81 cars moved over a single line, 851 over two lines, 205 over three lines, and 4 cars over four lines. Of 7,977 cars moving from the yellow-pine blanket, as a whole, to St. Louis, East St. Louis, Cairo, and Thebes, more than one-half moved over two lines. The conclusion is inevitable, therefore, that the argument of the Texas & Pacific that it does not reach Cairo with its own line cannot be accepted as conclusive evidence of the unreasonableness of the 16-cent rate.

* * * * *

It is further urged on behalf of the Rock Island, the Vicksburg, Shreveport & Pacific, and Morgan's Louisiana & Texas Railroad that considerations similar to those above set forth make it inequitable to require those lines to comply with our decision in the Paducah case, though the rates in the suspended tariffs are in compliance therewith. It is alleged that Paducah is not fairly comparable with Cairo, and that the Commission should recognize the natural advantages of Cairo. This evidence was before us when the Paducah case was decided, and nothing appears in the present record which convinces us that our conclusion should be changed.

Nor can we agree that the rate to Cairo is unduly low. In *Rates on Lumber from Southern Points, supra*, the respondents, including all of the railroads serving this territory, proposed to increase from 16 cents to 17 cents the rate on yellow-pine lumber from the southwestern blanket to Thebes and Cairo proper. Complete evidence was submitted in that case as to the quantity of movement, the number of lines participating in the hauls, the history of the rates, the financial condition of the respondents, and the operating conditions under which the traffic is transported. We concluded that the proposed increased rate was not shown to be reasonable.

There appears to be no reason for permitting the Rock Island to charge a higher rate to Paducah than to Cairo. As we have already stated, the route to Paducah in which the Rock Island participates is the natural and logical route. If the Rock Island desires to compete at Cairo with the more direct lines reaching that point, it may do so, but to avoid unjust discrimination it must publish the same rate to Paducah.

The defendants lay some emphasis on the fact that Cairo is a

21 natural "rate-breaking" point, and that rates from the south-west to points north and east of Cairo are almost invariably made by combination on Cairo, the inference being that the Paducah rates should be similarly constructed. It is further contended that if joint rates are established to Paducah on the Cairo basis, other cities located north and east of Cairo, St. Louis and other rate-breaking points may logically ask that they be similarly favored. The Rock Island goes so far as to contend that since the distance from Memphis to Paducah is about 170 miles, the extension of the Cairo rates to Paducah might logically be followed by extending them to all points 170 miles from Memphis, such as Winnfield, Ala., Leighton, Ala., and Pickens, Miss. This contention disregards everything but distance, and its impropriety is obvious. The contention that the Paducah rates should be constructed by combination on Cairo disregards the essential features of this situation, namely, that the Cairo route is not the natural or logical route for the movement of this traffic to Paducah. To the defendants' contention that the extension of the Cairo rates to Paducah will lead to demands from other points for similar rates, the answer is, that unjust discrimination against one point cannot be permitted to continue for fear of the results of its elimination.

The evidence abundantly confirms our previous finding, that the present rates to Paducah are unjustly discriminatory and give an undue preference to Cairo. In spite of Paducah's favorable location, and in spite of the fact that the distances to Paducah via Memphis are not greater than the distances to Cairo, the rates to Cairo have been much lower than the rates to Paducah, and the lumber industry at the latter point has not developed nearly as rapidly as at Cairo. At least two companies have recently moved their plants from Paducah to Cairo because of the more favorable rates to the latter point.

We adhere to our former finding, that the defendants unduly discriminate against Paducah to the undue preference and advantage of Cairo by the maintenance of their present rates on logs and lumber from the producing points here involved. We 22 further find that the rates on logs and lumber to Paducah from points of origin in the territory involved are unreasonable to the extent that they exceed the present rates to Cairo. We further find that the defendants should establish through routes to Paducah from points or groups in Arkansas and Louisiana west of the Mississippi River, on and south of the line of the Chicago, Rock Island & Pacific railway from Memphis to Little Rock, Ark., including Des Arc, Ark., and joint rates applicable via such through routes no higher than the rates at present maintained from the same points or groups to Cairo. These through routes and joint rates may be established via either Memphis or Cairo.

An appropriate order will be entered.

37 I. C. C.

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 21st day of January, A. D. 1916.

No. 7736.

PADUCAH BOARD OF TRADE

v.

ILLINOIS CENTRAL RAILROAD COMPANY; THE ARKANSAS, LOUISIANA & Gulf Railroad Company; Arkansas Central Railroad Company; Arkansas Southeastern Railroad Company and A. E. Green, D. M. McCullough, and J. W. McKee, Receivers; The Arkansas Western Railway Company; The Atchison, Topeka & Santa Fe Railway Company; The Beaumont, Sour Lake & Western Railway Company and Frank Andrews, Receiver; Bernice & Northwestern Railway Company; The Chicago, Rock Island & Pacific Railway Company; Fort Smith & Western Railroad Company; The Gulf & Sabine River Railroad Company; Gulf, Colorado & Santa Fe Railway Company; Houston & Texas Central Railroad Company; The Houston, East & West Texas Railway Company; Houston & Shreveport Railroad Company; Iberia & Vermillion Railroad Company; Jonesboro, Lake City & Eastern Railroad Company; The Kansas City, Mexico & Orient Railroad Company; The Kansas City, Clinton & Springfield Railway Company; The Kansas City Southern Railway Company; Lake Charles & Northern Railroad Company; Louisiana & Arkansas Railway Company; Louisville & Nashville Railroad Company; Louisiana Rail-
 24 way & Navigation Company; Louisiana & Pacific Railway Company; The Louisiana & Northwest Railroad Company and Geo. W. Hunter, Receiver; Louisiana Western Railroad Company; Mansfield Railway & Transportation Company; Midland Valley Railroad Company; Missouri, Oklahoma & Gulf Railway Company and Alexander New and Louis S. Posner, Receivers Thereof; Missouri, Kansas & Texas Railway Company; The Missouri, Kansas & Texas Railway Company of Texas; The Missouri Pacific Railway Company; Missouri & North Arkansas Railroad Company and John Scullin, Jesse McDonald, and W. S. Holt, Receivers; Morgan's Louisiana & Texas Railroad & Steamship Company; Nashville, Chattanooga & St. Louis Railway; Natchez & Southern Railway Company; Natchez, Columbia & Mobile Railroad Company; New Iberia & Northern Railroad Company; New Orleans, Texas & Mexico Railroad Company and J. D. O'Keefe, Receiver; The Opelousas, Gulf & Northeastern Railway Company and Wm. H. Peterman, Receiver; Paris & Great Northern Railroad Company; Red River & Gulf Railroad Company; The Sibley, Lake Bisteneau & Southern Railway Company; St. Louis Southwestern Railway Company; St. Louis & San Francisco Railroad Company and James W. Lusk, W. C. Nixon, and W. B. Biddle, Receivers; St. Louis, Iron Mountain & Southern Railway Com-

pany; St. Louis, San Francisco & Texas Railway Company and Avery Turner and G. H. Schleyer, Receivers; St. Louis Southwestern Railway Company of Texas; Texarkana & Fort Smith Railway Company; The Texas & Pacific Railway Company; Texas Midland Railroad; Texas & New Orleans Railroad Company; Tremont & Gulf Railway Company; Vicksburg, Shreveport & Pacific Railway Company; and Woodworth & Louisiana Central Railway Company.

25 This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the above-named defendants, in so far as they participate in the traffic, be, and they are hereby, notified and required to cease and desist, on or before March 20, 1916, and thereafter to abstain, from publishing, demanding, or collecting their present rates for the transportation of logs and lumber to Paducah, Ky., from points or groups in Arkansas and Louisiana west of the Mississippi River on and south of the line of the Chicago, Rock Island & Pacific Railway from Memphis to Little Rock, Ark., including Des Arc, Ark., which rates have been found in and by said report of the Commission to be unreasonable and unjustly discriminatory.

It is further ordered, That said defendants be, and they are hereby, notified and required to establish, on or before March 20, 1916, upon notice to the Interstate Commerce Commission and to the general public by not less than five days' filing and posting in the manner prescribed by section 6 of the act to regulate commerce, and thereafter to maintain through routes for the transportation of logs and lumber via Cairo, Ill., or Memphis, Tenn., to Paducah, Ky., from points or groups in Arkansas and Louisiana west of the Mississippi River on and south of the line of the Chicago, Rock Island & Pacific Railway from Memphis, Tenn., to Little Rock, Ark., including Des Arc, Ark.; and to establish and maintain joint rates to Paducah, Ky., applicable via such through routes, not in excess of the rates at present in effect from the same points or groups to Cairo, Ill.

And it is further ordered, That this order shall continue in
26 force for a period of not less than two years from the date when it shall take effect.

By the Commission.

[SEAL.]

GEORGE B. MCGINTY, *Secretary.*

27

EXHIBIT "A."

Filed With the Petition For An Injunction on March 15th. 1916.

3378.

Interstate Commerce Commission.

No. 7736.

PADUCAH BOARD OF TRADE

v.

ILLINOIS CENTRAL RAILROAD COMPANY et al.

Submitted October 30, 1915. Decided January 21, 1916.

Upon complaint that the rates on logs and lumber to Paducah, Ky., from points in Louisiana and Arkansas are unreasonable and unjustly discriminatory as compared with the rates from the same producing territory to Cairo, Ill.; Held:

1. The rates to Paducah are shown to be unreasonable.

2. The rates to Paducah are shown to be unjustly discriminatory as compared with the rates to Cairo. Defendants required to establish joint rates to Paducah via either Cairo, Ill., or Memphis, Tenn., not in excess of the rates contemporaneously maintained to Cairo. Findings in Paducah Board of Trade v. I. C. R. R. Co., 29 I. C. C., 583, affirmed.

J. V. Norman for complainant.

Charles Rixey, jr., for Illinois Central Railroad Company.

E. A. Haid, A. L. Burford, H. G. Herbel, F. G. Wright, and W. F. Dickinson for other defendants.

F. M. Ducker and Ray Williams for Cairo Association of Commerce, intervener.

Report of the Commission.

MEYER, *Commissioner*:

In Paducah Board of Trade v. I. C. R. R. Co., 29 I. C. C., 583, it was alleged, among other things, that the rates on logs and lumber to Paducah, Ky., from points in Arkansas and Louisiana on and south of the Memphis-Little Rock line of the Chicago, Rock Island & Pacific Railway were unreasonable and unjustly discriminatory as compared with the rates from the same producing territory to Cairo, Ill. The evidence in that case showed that the distances to Paducah from the points of origin via Memphis are less than the distances via Cairo. We said:

Since the complaint did not contain a specific request for the establishment of through routes and joint rates, we can not order their establishment via Memphis. However, we believe that since

the short-line distances from points west of the Mississippi and south of the line of the Chicago, Rock Island & Pacific from Memphis to Little Rock are not greater to Paducah than to Cairo, defendant should be required to establish from points or groups substantially equidistant from Cairo and Paducah rates to Paducah over the present routing, unless they elect to do so over the more direct route via Memphis, no higher than the rates contemporaneously maintained from the same points to Cairo. The rates to Paducah from

28 points west of the river should not be lower than those to Cairo, because in hauling from west-side points to Paducah the Mississippi must be crossed as well as in hauling to Cairo. Under these requirements the St. Louis, Iron Mountain & Southern and the St. Louis Southwestern may haul lumber originating on their line or their connections via Cairo if they so desire. The Chicago, Rock Island & Pacific will, of course, route its traffic as at present, via Memphis.

We find that defendants unduly discriminate against the dealer and manufacturers of lumber at Paducah to the undue preference and advantage of those located at Cairo by the maintenance of the rates on lumber at present in effect from the producing points herein involved. * * * The defendants who operate west of the Mississippi River will be required to maintain rates to Paducah from substantially equidistant points or groups in Arkansas and Louisiana west of the river, on and south of the line of the Chicago, Rock Island & Pacific from Memphis to Little Rock no higher than those contemporaneously maintained from the same points to Cairo.

Carriers will be expected by May 1, 1914, to revise their tariffs in accordance with the views expressed in this report. Pending such revision the case will be held open for such further proceeding and order as the Commission may deem necessary.

The complainant now alleges that "defendants have failed to even attempt to comply with said findings," and the Commission is asked to require the defendants to establish through routes and joint rates from the points in question to Paducah not in excess of the rates contemporaneously maintained from the same points to Cairo. It is again alleged that the rates on lumber to Paducah are unreasonable and unjustly discriminatory. The Cairo Association of Commerce intervened.

Paducah is situated on the south bank of the Ohio River 42 miles east of Cairo. Its population is about 25,000. There are a number of manufacturers of lumber and wood articles at Paducah who compete with manufacturers located at Cairo. Cairo, whose population is approximately 17,000, is located at the extreme southern end of Illinois, at the confluence of the Mississippi River and the Ohio River. Both Paducah and Cairo obtain a part of their lumber from west of the Mississippi River. Most of the traffic from the lumber producing territory west of the river to Paducah is handled through Cairo, and the Paducah rates are made by combination on Cairo, the rate from Cairo to Paducah being 6 cents per 100 pounds. The west-side lines do not reach Paducah, so that at least two carrier

participate in the hauls from Arkansas and Louisiana points to Paducah.

The principal issue in the present case is whether it is appropriate or lawful to require the defendants to establish through routes and joint rates to Paducah via Memphis. In the previous case we held that the Memphis route was the natural route for the movement of this traffic, but as the complaint did not contain a prayer for 29 through routes we did not require their establishment. The defendants earnestly insist not only that the Memphis route is an unnatural one but that the Commission could not lawfully establish through routes and joint rates via that route. The latter contention is based on that portion of section 15 of the act to regulate commerce which provides that the Commission, in establishing a through route, shall not require any carrier, without its consent, to embrace therein substantially less than the entire length of its railroad lying between the termini of the through route unless to do so would make such through route unreasonably long as compared with another practicable route.

Three routes for hauling lumber from the points of origin to Paducah were discussed by the witnesses—the Bird's Point route, the Thebes route, and the Memphis route.

Until somewhat more than two years ago the Iron Mountain and the St. Louis Southwestern handled their traffic from the southwest through Bird's Point, Mo., from which a car ferry was operated to Cairo. An "incline" connected the tracks of the rail lines with the car ferry. More than two years ago this incline was washed away, and since that time these carriers have been unable, even with the assistance of government engineers, to find a point on the west bank of the river in this vicinity at which a similar incline can be permanently located. They therefore haul the traffic via Illmo, Mo., and Thebes, Ill., thence a distance of 28 miles over the tracks of the Chicago & Eastern Illinois Railroad and the Illinois Central Railroad to Cairo. The distance via the Bird's Point route are approximately 30 miles less than the distances via Thebes, and the defendants insist that in determining the reasonableness or unreasonableness of the Memphis route the distances via Memphis should be compared with the distances via Bird's Point. There can be no question, however, of the impropriety of measuring distances over a route which has been closed for more than two years, especially since there is no prospect of its being reopened in the immediate future.

In the previous report we held that the distances to Paducah via Cairo are so much greater than the distances via Memphis that "the natural route from the points west of the Mississippi here involved is via Memphis rather than via Cairo." Nothing appears in the present record to convince us that that finding should be modified.

Exhibits filed by the defendants show that the average distance to Paducah via Thebes from 10 representative points on the St. Louis Southwestern Railway is 381.3 miles, while the average distance from the same points via Memphis is 360.8 miles. From 12 typical points on the St. Louis, Iron Mountain & Southern Railway the average distance to Paducah via Memphis is 501 miles, as compared with 559 miles via Thebes. From 11 representative

producing points on the Chicago, Rock Island & Pacific Railway the average distances via Memphis and Thebes are 501 miles and 544.6 miles, respectively. In computing these distances via Thebes, however, no allowance was made for the constructive mileage of the Cairo bridge. In our previous report we observed that in reaching Paducah via Thebes it is necessary to cross both the Mississippi River and the Ohio River, while only the former must be crossed if the Memphis route is used. In a number of recent cases the carriers have maintained that the bridges spanning these rivers, and especially the one at Cairo, are expensive, and that the cost of their construction and maintenance should be reflected in the rates. It is clear, at any rate, that in determining the relative reasonableness or practicability of two routes the operating conditions are entitled to consideration. The principal defendants in this case were respondents in Rates on Lumber from Southern Points, 34 I. C. C., 652. It was shown by the respondents in that case that at some of the crossings it actually costs the carriers 2.1 cents per 100 pounds to haul lumber across the Ohio River; that the cost of the Cairo bridge, as of January 30, 1915, was \$3,731,852.47; and it was argued that in view of these facts the Commission should permit the respondents to increase their rates on lumber from points in the south to points located on the north bank of the Ohio River; and that "it is difficult to conceive upon what ground it could be urged that the carriers should be required to absorb all bridge tolls in all directions at all crossings."

Two of the defendants, the St. Louis Southwestern Railway and the Chicago, Rock Island & Pacific Railway, maintain that it would be peculiarly unjust to them to require the establishment of through routes and joint rates via Memphis. The former carrier does not reach Memphis with its own rails. A contract entered into several years ago by the St. Louis Southwestern and the St. Louis, Iron Mountain & Southern provides that the former shall deliver to the latter at Fair Oaks, Ark., all freight originating on the line of the former, or its connections, and consigned to or through Memphis. The contract also provides that the St. Louis, Iron Mountain & Southern shall receive 3 cents per 100 pounds for its haul from Fair Oaks to Memphis. The St. Louis Southwestern shows that a shipment originating, for example, at Winnfield, La., would move over the line of the Louisiana & Arkansas Railroad from Winnfield to Stamps, Ark., thence over the St. Louis Southwestern from Stamps to Fair Oaks, thence over the St. Louis, Iron Mountain & Southern from Fair Oaks to Memphis, and finally over the Illinois Central from Memphis to Paducah. The originating carrier, the Louisiana & Arkansas Railroad, at present receives a division of 7 cents per 100 pounds out of the through rate, the Iron Mountain 3 cents, and the Illinois Central 6 cents, a total of 16 cents. The St. Louis Southwestern points out that the present rate from Winnfield to Cairo is 16 cents, and that if the same rate were extended to Paducah that carrier would receive nothing for its haul from Stamps to Fair Oaks. The question of divisions, however, is not involved in this proceeding.

On behalf of the Chicago, Rock Island & Pacific Railway it is con-

tended that its rates to Cairo are depressed by the severest competitive influences, and that since the same competition is not encountered at Paducah it would be unjust to require this carrier to extend its Cairo rate to Paducah. The Rock Island, in compliance with our previous report, filed a tariff naming the same rates to Paducah as to Cairo, but that tariff was suspended in Rates on Lumber from Southern Points, supra, and this defendant joins with the others in contending that Paducah is not entitled to the Cairo rates.

The Rock Island does not reach either Cairo or Paducah with its own rails. Its Cairo traffic may be turned over to the St. Louis & San Francisco Railroad at Bridge Junction, Ark., opposite Memphis, or to the Illinois Central at Memphis. Its Paducah traffic is turned over to the Illinois Central or the Nashville, Chattanooga & St. Louis at Memphis. The Rock Island serves a territory in Arkansas and Louisiana which is also reached by several other carriers, two of which have direct lines to Cairo. To compete for Cairo traffic it is necessary for the Rock Island, in conjunction with the St. Louis & San Francisco Railroad or the Illinois Central Railroad, to meet the rates to Cairo established by the direct lines, although the haul in which the Rock Island participates involves at least two lines and in many instances three lines. In view of these facts the Rock Island maintains that its rate to Cairo is depressed by competitive conditions which do not exist at Paducah, and that the rates to Paducah should therefore be higher than the rates to Cairo. This evidence was before us in the previous case and was again introduced by the respondents in Rates on Lumber from Southern Points, supra. In the latter case, at pages 671 and 672, we said:

It is further urged on behalf of the southwestern respondents generally that the 16-cent rate to Cairo was made by lines which have a single line from the points of origin to that gateway, and that it would be manifestly unjust for this Commission to compel such a line as the Texas & Pacific, whose traffic can not reach Cairo by a one-line haul, to continue the publication of the 16-cent rate to that point. Exhibits filed on behalf of the respondents, however, show that most of the lumber from the yellow-pine blanket moves to Cairo by two or more lines. It is shown that for six alternate months in

32 1911 and 1912 the total movement of yellow-pine lumber from the blanket to Cairo proper was 1,141 cars. Of this number only 81 cars moved over a single line, 851 over two lines, 205 over three lines, and 4 cars over four lines. Of 7,977 cars moving from the yellow-pine blanket, as a whole, to St. Louis, East St. Louis, Cairo, and Thebes, more than one-half moved over two lines. The conclusion is inevitable, therefore, that the argument of the Texas & Pacific that it does not reach Cairo with its own line can not be accepted as conclusive evidence of the unreasonableness of the 16-cent rate.

* * * * *

It is further urged on behalf of the Rock Island, the Vicksburg, Shreveport & Pacific, and Morgan's Louisiana & Texas Railroad that considerations similar to those above set forth make it inequitable to

require those lines to comply with our decision in the Paducah case, though the rates in the suspended tariffs are in compliance therewith. It is alleged that Paducah is not fairly comparable with Cairo, and that the Commission should recognize the natural advantages of Cairo. This evidence was before us when the Paducah case was decided, and nothing appears in the present record which convinces us that our conclusion should be changed.

Nor can we agree that the rate to Cairo is unduly low. In *Rates on Lumber from Southern Points*, supra, the respondents, including all of the railroads serving this territory, proposed to increase from 16 cents to 17 cents the rate on yellow-pine lumber from the southwestern blanket to Thebes and Cairo proper. Complete evidence was submitted in that case as to the quantity of movement, the number of lines participating in the hauls, the history of the rates, the financial condition of the respondents, and the operating conditions under which the traffic is transported. We concluded that the proposed increased rate was not shown to be reasonable.

There appears to be no reason for permitting the Rock Island to charge a higher rate to Paducah than to Cairo. As we have already stated, the route to Paducah in which the Rock Island participates is the natural and logical route. If the Rock Island desires to compete at Cairo with the more direct lines reaching that point, it may do so, but to avoid unjust discrimination it must publish the same rate to Paducah.

The defendants lay some emphasis on the fact that Cairo is a natural "rate-breaking" point, and that rates from the southwest to points north and east of Cairo are almost invariably made by combination on Cairo, the inference being that the Paducah rates should be similarly constructed. It is further contended that if joint rates are established to Paducah on the Cairo basis, other cities located north and east of Cairo, St. Louis, and other rate-breaking points may logically ask that they be similarly favored. The Rock Island goes so far as to contend that since the distance from Memphis to Paducah is about 170 miles the extension of the Cairo rates to Paducah might logically be followed by extending them to all points 170

33 miles from Memphis, such as Winfield, Ala., Leighton, Ala., and Pickens, Miss. This contention disregards everything but distance, and its impropriety is obvious. The contention that the Paducah rates should be constructed by combination on Cairo disregards the essential features of this situation, namely, that the Cairo route is not the natural or logical route for the movement of this traffic to Paducah. To the defendants' contention that the extension of the Cairo rates to Paducah will lead to demands from other points for similar rates the answer is that unjust discrimination against one point can not be permitted to continue for fear of the results of its elimination.

The evidence abundantly confirms our previous finding that the present rates to Paducah are unjustly discriminatory and give an undue preference to Cairo. In spite of Paducah's favorable location, and in spite of the fact that the distances to Paducah via Memphis are not greater than the distances to Cairo, the rates to Cairo have

been much lower than the rates to Paducah, and the lumber industry at the latter point has not developed nearly as rapidly as at Cairo. At least two companies have recently moved their plants from Paducah to Cairo because of the more favorable rates to the latter point.

We adhere to our former finding that the defendants unduly discriminate against Paducah to the undue preference and advantage of Cairo by the maintenance of their present rates on logs and lumber from the producing points here involved. We further find that the rates on logs and lumber to Paducah from points of origin in the territory involved are unreasonable to the extent that they exceed the present rates to Cairo. We further find that the defendants should establish through routes to Paducah from points or groups in Arkansas and Louisiana west of the Mississippi River, on and south of the line of the Chicago, Rock Island & Pacific Railway from Memphis to Little Rock, Ark., including Des Arc, Ark., and joint rates applicable via such through routes no higher than the rates at present maintained from the same points or groups to Cairo. These through routes and joint rates may be established via either Memphis or Cairo.

An appropriate order will be entered.

34

Order.

At a General Session of the Interstate Commerce Commission, Held at its Office in Washington, D. C., on the 21st Day of January, A. D. 1916.

No. 7736.

PADUCAH BOARD OF TRADE

v.

ILLINOIS CENTRAL RAILROAD COMPANY; THE ARKANSAS, LOUISIANA & Gulf Railroad Company; Arkansas Central Railroad Company; Arkansas Southeastern Railroad Company and A. E. Green, D. M. McCullough, and J. W. McKee, Receivers; The Arkansas Western Railway Company; The Atchison, Topeka & Santa Fe Railway Company; The Beaumont, Sour Lake & Western Railway Company and Frank Andrews, Receiver; Bernice & Northwestern Railway Company; The Chicago, Rock Island & Pacific Railway Company; Fort Smith & Western Railroad Company; The Gulf & Sabine River Railroad Company; Gulf, Colorado & Santa Fe Railway Company; Houston & Texas Central Railroad Company; The Houston, East & West Texas Railway Company; Houston & Shreveport Railroad Company; Iberia & Vermillion Railroad Company; Jonesboro, Lake City & Eastern Railroad Company; The Kansas City, Mexico & Orient Railroad Company; The Kansas City, Clinton & Springfield Railway Company; The Kansas City Southern Railway Company; Lake Charles & Northern Railroad Company; Louisiana & Arkansas Railway Company; Louisville & Nashville Railroad Company; Louisiana Railway & Navigation

- Company; Louisiana & Pacific Railway Company; The Louisiana & Northwest Railroad Company and Geo. W. Hunter, Receiver; Louisiana Western Railroad Company; Mansfield Railway & Transportation Company; Midland Valley Railroad Company; Missouri, Oklahoma & Gulf Railway Company and Alexander New and Louis S. Posner, Receivers Thereof; Missouri, Kansas & Texas Railway Company; The Missouri, Kansas & Texas Railway Company of Texas; The Missouri Pacific Railway Company; Missouri & North Arkansas Railroad Company and John Scullin, Jesse McDonald, and W. S. Holt, Receivers; Morgan's Louisiana & Texas Railroad & Steamship Company; Nashville, Chattanooga & St. Louis Railway; Natchez & Southern Railway Company; Natchez, Columbia & Mobile Railroad Company; New Iberia & Northern Railroad Company; New Orleans, Texas & Mexico Railroad Company and J. D. O'Keefe, Receiver; The Opelousas, Gulf & Northeastern Railway Company and Wm. H. Peterman, Receiver; Paris & Great Northern Railroad Company; Red River & Gulf Railroad Company; The Sibley, Lake Bisteneau & Southern Railway Company; St. Louis Southwestern Railway Company; St. Louis & San Francisco Railroad Company and James W. Lusk, W. C. Nixon, and W. B. Biddle, Receivers; St. Louis, Iron Mountain & Southern Railway Company; St. Louis, San Francisco & Texas Railway Company and Avery Turner and G. H. Schleyer, Receivers; St. Louis, Southwestern Railway Company of Texas; Texarkana & Fort Smith Railway Company; The Texas & Pacific Railway Company; Texas Midland Railroad; Texas & New Orleans Railroad Company; Tremont & Gulf Railway Company; Vicksburg, Shreveport & Pacific Railway Company, and Woodworth & Louisiana Central Railway Company.

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the above-named defendants, in so far as they participate in the traffic, be, and they are hereby, notified and required to cease and desist, on or before March 20, 1916, and thereafter to abstain, from publishing, demanding, or collecting their present rates for the transportation of logs and lumber to Paducah, Ky., from points or groups in Arkansas and Louisiana west of the Mississippi River on and south of the line of the Chicago, Rock Island & Pacific Railway from Memphis to Little Rock, Ark., including Des Arc, Ark., which rates have been found in and by said report of the Commission to be unreasonable and unjustly discriminatory.

It is further ordered, That said defendants be, and they are hereby, notified and required to establish, on or before March 20, 1916, upon notice to the Interstate Commerce Commission and to the general public by not less than five days' filing and posting in the manner

prescribed in section 6 of the act to regulate commerce, and thereafter to maintain through routes for the transportation of logs and lumber via Cairo, Ill., or Memphis, Tenn., to Paducah, Ky., from points or groups in Arkansas and Louisiana west of the Mississippi River, on and south of the line of the Chicago, Rock Island & Pacific Railway from Memphis, Tenn., to Little Rock, Ark., including Des Arc, Ark.; and to establish and maintain joint rates to Paducah, Ky., applicable via such through routes, not in excess of the rates at present in effect from the same points or groups to Cairo, Ill.

And it is further ordered, That this order shall continue in force for a period of not less than two years from the date when it shall take effect.

By the Commission.

[SEAL.]

GEORGE B. MCGINTY,
Secretary.

37 On another day of said Term, to-wit, March 16th, 1916, the following motion was filed:

In the District Court of the United States for the Western District of Kentucky.

In Equity. No. 33.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY et al., Petitioners,
vs.

UNITED STATES OF AMERICA, Respondent.

Motion to Set Case for Hearing.

Now come petitioners in the above styled cause by their Solicitors, Edward A. Haid, H. G. Herbel and W. F. Dickinson, and move the Court to set said cause down for hearing on their application for a temporary injunction on a date sufficiently early to enable the Court to reach a conclusion therein not later than the 5th day of April, 1916. Petitioners base their motion on the following grounds, to-wit:

By its supplementary order entered herein, the Interstate Commerce Commission requires petitioners to comply with said order, by filing tariffs prescribing the rates therein ordered, with the Interstate Commerce Commission and posting same as provided by law five (5) days before April 15, 1916. That in order to comply therewith it will be necessary for petitioners to prepare and print their tariffs not later than the 5th day of April, 1916. That under the law five (5) days' notice of hearing of the application for temporary injunction in this cause must be given the respondent and the Interstate Commerce Commission.

Petitioners, therefore, desire the Court to set this case for hearing on their application for a temporary injunction in ample
38 time to enable them to give lawful notice to the respondent and the Interstate Commerce Commission, and in the event

of their failure to secure the relief prayed for, to enable them to publish and file their tariffs as required by the order of the Interstate Commerce Commission.

EDWARD A. HAID,
Attorney for St. Louis Southwestern Railway Company.

HENRY H. HERBEL,
Attorney for St. Louis, Iron Mountain & Southern Railway.

W. F. DICKINSON,
Attorney for Chicago, Rock Island & Pacific Railway.

39 On another day of said Term, to-wit, March 16th, 1916, the following order was entered of record.

In the District Court of the United States for the Western District of Kentucky.

In Equity. No. 33.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY et al., Petitioners,
vs.
UNITED STATES OF AMERICA, Respondent.

This day appeared the petitioners by Edward A. Haid, G. G. Herbel and W. F. Dickinson, their Solicitors, and moved the Court as follows:

Now come petitioners in the above styled cause by their Solicitors, Edward A. Haid, H. G. Herbel and W. F. Dickinson, and move the Court to set said cause for hearing on their application for a temporary injunction on a date sufficiently early to enable the Court to reach a conclusion therein not later than the 5th day of April, 1916. Petitioners base this motion on the following grounds, to-wit:

By its supplementary order entered herein the Interstate Commerce Commission requires petitioners to comply with said order, by filing tariffs prescribing the rates therein ordered, with the Interstate Commerce Commission and posting same as provided by law five (5) days before April 15, 1916. That in order to comply therewith, it will be necessary for petitioners to prepare and print their tariffs not later than the 5th day of April, 1916. That under the law five (5) days' notice of hearing of the application for temporary injunction in this cause must be given the respondent and the Interstate Commerce Commission.

Petitioners, therefore, desire the Court to set this case for hearing on their application for a temporary injunction in ample time to enable them to give lawful notice to the respondent and the Interstate Commerce Commission, and, in the event of their failure to secure the relief prayed for, to enable them to publish and file their tariffs as required by the order of the Interstate Commerce Commission,

and the Court sustained said motion to the extent of setting this

cause for hearing on the application for a temporary injunction, and for such other steps as it may seem proper to be had on March 27, 1916.

40 The Complaint of the Paducah Board of Trade filed with the Interstate Commerce Commission, read on the hearing on March 27th., 1916, and referred to in the order of submission is as follows:

Before the Interstate Commerce Commission.

PADUCAH BOARD OF TRADE, Complainant,
versus

ILLINOIS CENTRAL RAILROAD COMPANY; THE ARKANSAS, LOUISIANA & Gulf Railroad Company; Arkansas Central Railroad Company; Arkansas Southeastern Railroad Company, and A. E. Green, D. M. McCullough, and J. W. McKee, Receiver; The Arkansas Western Railway Company; The Atchison, Topeka & Santa Fe Railway Company; The Beaumont, Sour Lake & Western Railway Company and Frank Andrews, Receiver; Bernice & Northwestern Railway Company; The Chicago, Rock Island & Pacific Railway Company; Fort Smith & Western Railroad Company; The Gulf & Sabine River Railroad Company; Gulf, Colorado & Santa Fe Railway Company; Houston & Texas Central Railroad Company; The Houston, East & West Texas Railway Company; Houston & Shreveport Railroad Company; Iberia & Vermillion Railroad Company; Jonesboro, Lake City & Eastern Railroad Company; The Kansas City, Mexico & Orient Railroad Company; The Kansas City, Clinton & Springfield Railway Company; The Kansas City Southern Railway Company; Lake Charles & Northern Railroad Company; Louisiana & Arkansas Railway Company; Louisville & Nashville Railroad Company; Louisiana Railway & Navigation Company; Louisiana & Pacific Railway Company; The Louisiana & Northwest Railroad Company and Geo. W. Hunter, Receiver; Louisiana Western Railroad Company; Mansfield Railway & Transportation Company; Midland Valley Railroad Company; Missouri, Oklahoma & Gulf Railway Company and Alexander New and Louis S. Posner, Receivers, thereof; Missouri, Kansas & Texas Railway Company; The Missouri, Kansas & Texas
41 Railway Company of Texas; The Missouri Pacific Railway Company; Missouri & North Arkansas Railroad Company and John Scullin, Jesse McDonald and W. S. Holt, Receivers; Morgans Louisiana & Texas Railroad & Steamship Company; Nashville, Chattanooga & St. Louis Railway; Natchez & Southern Railway Company; Natchez, Columbia & Mobile Railroad Company; New Iberia & Northern Railroad Company; New Orleans, Texas & Mexico Railroad Company and J. D. O'Keefe, Receiver; The Opelousas, Gulf & Northeastern Railway Company and Wm. H. Peterman, Receiver; Paris & Great Northern Railroad Company; Red River & Gulf Railroad Company; The Sibley, Lake Bisteneau & Southern Railway Company; St. Louis Southwestern Railway Company; St. Louis & San Francisco Railroad Company

and James W. Lusk, W. C. Nixon and W. B. Biddle, Receivers; St. Louis, Iron Mountain & Southern Railway Company; St. Louis, San Francisco & Texas Railway Company and Avery Turner and G. H. Schleyer, Receivers; St. Louis, Southwestern Railway Company of Texas; Texarkana & Ft. Smith Railway Company; The Texas & Pacific Railway Company; Texas Midland Railroad; Texas & New Orleans Railroad Company; Tremont & Gulf Railway Company; Vicksburg, Shreveport & Pacific Railway Company; Woodworth & Louisiana Central Railway Company, Defendants.

Complaint.

Comes the above-named complainant and respectfully shows:

I.

That complainant, Paducah Board of Trade, is a corporation duly organized and existing under the laws of the State of
42 Kentucky, and that the object of said corporation is to build up the city of Paducah, Ky., and especially to guard and promote the interests of the jobbers, commission merchants and manufacturers of said city.

Each of the defendants named in the caption operates a railroad in the territory hereinafter described in Paragraph II.

Each of the defendants named in the caption is a common carrier, engaged in interstate commerce, and as such common carriers said defendants are subject to the provisions of the Act to Regulate Commerce, approved February 4, 1887, and the acts amendatory thereof and supplementary thereto. Defendants have in force at various points upon their respective lines, traffic arrangements with each other and participate in joint tariffs and freight rates from points in the territory hereinafter described to Paducah, Ky., and Cairo, Ill.

II.

Paducah, Ky., is on the south bank of the Ohio River and is a jobbing and manufacturing city and does a large business in buying, selling, rehandling and manufacturing lumber and lumber commodities and is a large shipper of lumber and lumber commodities made from hardwood lumbers, pine and cottonwood and gum. That the principal competitors of the lumber merchants and manufacturers of Paducah are located at Cairo, Ill., a city located on
43 the north bank of the Ohio River about forty miles from Paducah and that both Cairo and Paducah obtain a large part of their supply of lumber from the producing territory west of the Mississippi River in the States of Louisiana and Arkansas, and that the rates maintained by defendants on lumber and lumber commodities from said territory to Paducah, Ky., are from two to six cents higher than the rates contemporaneously maintained by defendants to Cairo, Ill.

Each of the defendants herein carries its own rates in its own tariffs and it is, therefore, impracticable to here set forth all the tariffs in which are carried the rates from the territory herein complained of to Cairo, Ill., and Paducah, Ky., but the following are some of said tariffs:

St. L. & S. F. R. R. Co., I. C. C. No. 6427.
 N. O. G. N. R. R. Co., I. C. C. No. 4278.
 St. L., I. M. & S. R'y, I. C. C. No. A-2192.
 St. L. S. W. R'y Co., I. C. C. No. 3057.
 K. C. Sou. R'y Co., I. C. C. No. 1945.
 I. C. R. R. Co., I. C. C. No. 4278.
 C., R. I. & P. R'y Co., I. C. C. No. C-9235.

III.

This Commission in the case of Paducah Board of Trade v. Illinois Central Railroad Company, et al., Docket No. 5897, reported in 29 I. C. C. Reporter, page 583, found that the route to Paducah, Ky., via Cairo, Ill., from producing points in the States of Louisiana and Arkansas, west of the Mississippi River and south of the line of the Chicago, Rock Island & Pacific Railway from Memphis, Tenn., to Little Rock, Ark., was unreasonably long as compared with the direct route via Memphis, Tenn. After so finding this Commission said:

"Since the complaint did not contain a specific request for the establishment of through routes and joint rates, we can not order their establishment via Memphis. However, we believe that since the short line distances from points west of the Mississippi and south of the line of the Chicago, Rock Island & Pacific from Memphis to Little Rock are not greater to Paducah than to Cairo, defendants should be required to establish from points or groups substantially equidistant from Cairo and Paducah rates to Paducah over the present routing, unless they elect to do so over the more direct route via Memphis, no higher than the rates contemporaneously maintained from the same points to Cairo. The rates to Paducah from points west of the river should not be lower than those to Cairo, because in hauling from west side points to Paducah the Mississippi must be crossed as well as in hauling to Cairo. Under these requirements the St. Louis, Iron Mountain & Southern and the St. Louis Southwestern may haul lumber originating on their lines or their connections via Cairo if they so desire. The Chicago, Rock Island & Pacific will, of course, route its traffic as at present, via Memphis."

No order was entered in the case, but the carriers were given until May 1, 1914, to revise their tariffs in accordance with the views expressed in the report of the Commission and this was extended to October 1, 1914, but defendants have failed to even attempt to comply with said finding and have made no change in their rates from said territory to either Paducah or Cairo.

45 Complainant says that the rates now maintained by defendants on logs and lumber in carloads to Paducah from produc-

ing points in Louisiana and Arkansas, on and south of the Chicago, Rock Island & Pacific Railway from Memphis, Tenn., to Little Rock, Ark., and including Des Arc, Ark., are unjust unreasonable and discriminatory and give to Cairo, Ill., an undue preference and advantage and subject Paducah, Ky., to an undue prejudice and disadvantage; that the route from said producing points to Paducah, Ky., via Cairo, Ill., is unduly long as compared with the route from said producing points to Paducah via Memphis, Tenn., and that through routes and joint rates should be established from said producing points to Paducah, Ky., via Memphis, Tenn., and joint rates should be established via said route which do not exceed the rates contemporaneously maintained from said producing points to Cairo, Ill.

Wherefore, complainant prays that the defendants be required to answer the charges herein; that after due hearing and investigation an order be entered requiring said defendants to wholly cease and desist from their unlawful acts herein complained of and establishing through routes and joint rates for shipments of logs and lumber to Paducah, Ky., from points in the State of Louisiana and Arkansas on and south of the line of the Chicago, Rock Island & Pacific Railway Company from Memphis, Tenn., to Little Rock, Ark., and including Des Arc, Ark., via Memphis, Tenn., with joint rates via said routes which shall not exceed the rates contemporaneously charged for the transportation of logs and lumber from the same points to Cairo, Ill.

J. V. NORMAN,
BRADSHAW & BRADSHAW,
Counsel for Complainant.

Address of Counsel, J. V. Norman, Paul Jones Bldg., Louisville, Ky.

Address of Complainant, Paducah, Ky.

47 *Intervening Petition of the Louisiana & Arkansas Railway Company, filed March 27th., 1916.*

In the District Court of the United States for the Western District of Kentucky.

In Equity. No. 33.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY et al., Petitioners,
vs.
UNITED STATES OF AMERICA, Respondent.

Intervening Petition of Louisiana & Arkansas Railway Company.

To the Honorable Judges of the District Court of the United States for the Western District of Kentucky:

Your petitioner, Louisiana & Arkansas Railway Company, respectfully states:

I.

That it is a railroad corporation organized and existing under and by virtue of the laws of the State of Arkansas.

II.

That it is, and at all of the times hereinafter referred to, was a common carrier engaged in the transportation of persons and property between the States of Louisiana and Arkansas and other States, and, as such, is subject to, and has in all respects complied with, the provisions of an Act of Congress of the United States entitled "An Act to Regulate Commerce," approved February 4, 1887, and the Acts amendatory thereof and supplementary thereto, and has in all respects complied with the lawful orders, rules and regulations of the Interstate Commerce Commission.

48

III.

That in accordance with the provisions of the Act to Regulate Commerce and the rules and regulations of the Interstate Commerce Commission, your petitioner has joined with St. Louis Southwestern Railway Company and St. Louis, Iron Mountain & Southern Railway Company in the publication of joint through rates on lumber and logs from stations on its line in the States of Arkansas and Louisiana to Cairo, Ill., which through rates are published in the tariffs of St. Louis Southwestern Railway Company and St. Louis, Iron Mountain & Southern Railway Company, and filed with the Interstate Commerce Commission, and posted as required by law; but that it does not join in the publication of joint rates on lumber and logs from stations on its line to Cairo via any line or route that reaches Paducah, Ky., nor does it publish or join in the establishment of joint through rates on lumber and logs from stations on its line to Paducah, Ky.

IV.

Your petitioner alleges that on or about the 8th day of February, 1915, there was filed with the Interstate Commerce Commission by Paducah Board of Trade, a corporation organized and existing under the laws of the State of Kentucky, against your petitioner and other railroads, a petition setting forth in substance that

"Paducah, Ky., is on the south bank of the Ohio River and is a jobbing and manufacturing city and does a large business in buying, selling, rehandling and manufacturing lumber and lumber commodities, and is a large shipper of lumber and lumber commodities made from hardwood lumbers, pine and cottonwood and gum. That the principal competitors of the lumber merchants and manufacturers of Paducah are located at Cairo, Ill., a city located on the north bank of the Ohio river about 40 miles from Paducah, and that both

Cairo and Paducah obtain a large part of their supply of lumber from the producing territory west of the Mississippi River in the States of Louisiana and Arkansas, and that the rates maintained by defendants (petitioners herein) on lumber and lumber commodities from said territory to Paducah, Ky., are from 2 to 6 cents higher than the rates contemporaneously maintained by defendants to Cairo, Ill."

49 Said petition further alleged in substance that the rates maintained by your petitioner and the other carriers, respondents in said cause

"on logs and lumber in carloads to Paducah from producing points in Louisiana and Arkansas, on and south of The Chicago, Rock Island & Pacific Railway from Memphis, Tenn., to Little Rock, Ark., and including Des Arc, Ark., are unjust, unreasonable and discriminatory and give to Cairo, Ill., an undue preference and advantage and subject Paducah, Ky. to an undue prejudice and disadvantage; that the route from said producing points to Paducah, Ky. via Cairo, Ill., is unduly long as compared with the route in said producing points to Paducah via Memphis, Tenn., and that through routes and joint rates should be established from said producing points to Paducah, Ky., via Memphis, Tenn., and joint rates should be established via said route which do not exceed the rates contemporaneously maintained from said producing points to Cairo, Ill."

Complainant, therefore, prayed for the establishment of

"through routes and joint rates for shipments of logs and lumber to Paducah, Ky., from points in the States of Louisiana and Arkansas on and south of the line of The Chicago, Rock Island & Pacific Railway from Memphis, Tenn., to Little Rock, Ark., and including Des Arc, Ark., via Memphis, Tenn., with joint rates via said routes which shall not exceed the rates contemporaneously charges for the transportation of logs and lumber from the same points to Cairo, Ill."

V.

Your petitioner and the other carriers respondent in said cause (which was numbered by the Interstate Commerce Commission 7736) filed answers denying the allegations of said petition. Thereafter, on, to-wit, the 24th day of May, 1915, a hearing was had by the Interstate Commerce Commission in said cause and testimony introduced, and subsequently said cause was submitted to the Interstate Commerce Commission on briefs and oral arguments, on, to-wit, the 30th day of October, 1915.

VI.

On the 21st day of January, 1916, the Interstate Commerce Commission made its report in said cause (copy of which is herewith

filed and made a part hereof, and marked Exhibit A), and entered an order that

50 "the above-named defendants, insofar as they participate in the traffic, be, and they are hereby, notified and required to cease and desist, on or before March 20, 1916, and thereafter to abstain, from publishing, demanding or collecting their present rates for transportation of logs and lumber to Paducah, Ky., from points or groups in Arkansas and Louisiana west of the Mississippi River, on, and south of the line of The Chicago, Rock Island & Pacific Railway from Memphis to Little Rock, Ark., including Des Arc, Ark., which rates have been found in and by said report of the Commission to be unreasonable and unjustly discriminatory.

"It is further ordered that said defendants be, and they are hereby, notified and required to establish, on or before March 20, 1916, upon notice to the Interstate Commerce Commission and to the general public by not less than five (5) days' filing and posting in the manner prescribed in Section 6 of the Act to Regulate Commerce, and thereafter to maintain through routes for the transportation of logs and lumber via Cairo, Ill., or Memphis, Tenn., to Paducah, Ky., from points or groups in Arkansas and Louisiana west of the Mississippi River, on and south of the line of The Chicago, Rock Island & Pacific Railway Company from Memphis, Tenn., to Little Rock, Ark., including Des Arc, Ark., and to establish and maintain joint rates to Paducah, Ky., applicable via such through routes, not in excess of the rates at present in effect from the same points or groups to Cairo, Ill."

That thereafter, to-wit, on or about the 11th day of March, 1916, the Interstate Commerce Commission entered a supplemental order in said cause postponing the effective date of its said order of January 21, 1916, to the 15th day of April, 1916.

VII.

Your petitioner respectfully avers that said order of the Interstate Commerce Commission was and is void for the following reasons:

(1). The Commission by its said order attempts to establish joint rates less, in amount, than the present combination of rates, although it has not found the present combination of rates to be unreasonably high.

(2). There was no evidence before the Interstate Commerce Commission from which it could find the present combination of rates to be unreasonably high.

(3). In determining whether "the present rates to Paducah are unjustly discriminatory and give an undue preference to Cairo," the Commission failed to consider the dissimilarity of conditions under which freight is transported and rates made to Cairo and Paducah respectively.

51 (4). There was no evidence before the Commission to sustain a finding that the present combination of rates makes or gives an undue or unreasonable preference or advantage to Cairo.

(5). The Commission is without authority to find petitioners guilty of discriminating against a point which they do not serve with their own rails, and to which they publish no joint through rates.

(6). Said order of the Commission is not responsive to the prayer of the complaint.

(7). The order of the complaint being for the establishment of through routes and joint rates via Memphis, the Commission was without jurisdiction to enter an alternative order, as it attempted to do.

(8). The Commission is without jurisdiction to establish through routes and joint rates over the lines of petitioners, St. Louis Southwestern Railway Company, and St. Louis, Iron Mountain & Southern Railway Company, via Memphis, in the absence of a finding that the routes via Cairo are unreasonably long.

(9). There was no evidence before the Commission from which it could find that routes over the lines of petitioners, St. Louis Southwestern Railway Company or St. Louis, Iron Mountain & Southern Railway Company, via Cairo, are unreasonably long.

(10). The Commission has not designated the carrier to the through routes ordered by it, between Memphis and Paducah.

(11). The Commission is without authority to order through routes via all lines operating between Memphis and Paducah.

(12). There was no evidence before the Commission bearing upon the constructive mileage of the bridge at Cairo.

(13). The Commission is without authority to take into consideration the constructive mileage of a bridge in determining the reasonableness of a route.

(14). There was no evidence to support the finding of the Commission, that the present Cairo rate would be a reasonable rate for the transportation of lumber and logs to Paducah.

(15). There was no evidence before the Commission justifying the establishment of through routes and joint rates.

(16). The order of the Commission amounts to confiscation, and is, therefore, in violation of the Fifth Amendment to the Constitution of the United States.

52

VIII.

Your petitioner further alleges that unless a temporary restraining order be issued as hereinafter prayed, your petitioner will, on and after the effective date of said order of the Interstate Commerce Commission, be required to charge and collect for the transportation of logs and lumber to Paducah, the rates prescribed therein, which rates your petitioner alleges were prescribed by the Commission without lawful authority, are unreasonably low, and, in effect, confiscate petitioner's property; your petitioner alleges that it has no adequate remedy at law in the premises, and will suffer irreparable injury unless such temporary restraining order be issued.

Wherefore, your petitioner prays that it be permitted to intervene in the above entitled cause as an intervening petitioner, and that

this, its intervening petition, be filed; that due service of this petition be made on respondent herein, commanding it to answer the matter hereof (but not under oath, answer under oath being expressly waived); that notice of the application for temporary restraining order hereby made be duly served on the respondent, on the Attorney-General of the United States, and on the Interstate Commerce Commission; that an immediate order restraining the enforcement of said order of the Interstate Commerce Commission be made, and an order of temporary injunction restraining the enforcement of said order of the Interstate Commerce Commission pending final hearing of this cause, be entered, and that, on such final hearing, the said orders of the Interstate Commerce Commission be in all things enjoined and set aside and held for naught; and that the Interstate Commerce Commission, its members, agents, attorneys, servants and representatives, be forever enjoined from enforcing said order, or taking any steps or instituting any proceedings for the enforcement thereof; and your petitioner prays for general and special relief as the equities in the case may

53 warrant.

LOUISIANA & ARKANSAS
RAILWAY COMPANY.

By HENRY MOORE,
EDW. A. HAID,
A. L. BURFORD,

Its Attorneys.

STATE OF MISSOURI,
City of St. Louis, ss:

B. S. Atkinson, of lawful age, being first duly sworn, deposes and says that he is Traffic Manager of Louisiana & Arkansas Railway Company, the above-named intervening petitioner; that he has read the same, knows the contents thereof, and that the averments thereof are true, partly of his own knowledge and partly of information and belief, and that he verily believes such averment thereof to be true.

B. S. ATKINSON.

Subscribed and sworn to before me this 24th day of March, A. D. 1916.

[SEAL.]

JAMES R. VAUGHAN,

Notary Public.

My commission expires Nov. 6, 1919.

53½ Exhibit "A" filed with the intervening petition of the Louisiana & Arkansas Railway Company, will be found copied on pages 27-36 of this record.

54 *Motion of the United States to Dismiss the Petition.*

Filed March 27th, 1916.

United States District Court, Western District of Kentucky.

In Equity. No. 33.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, a Corporation;
 St. Louis, Iron Mountain and Southern Railway Company, a
 Corporation; and the Chicago, Rock Island and Pacific Railway
 Company, Petitioners,

vs.

UNITED STATES OF AMERICA, Respondent.

Motion of the United States to Dismiss the Petition.

United States of America, respondent, by its counsel, now comes
 and moves the Court to dismiss the petition in the above-entitled
 cause at the cost of the petitioners.

As grounds for this motion, it is shown:

1. The petition is without equity on its face, and does not state
 any cause of action against the respondent, and the Court may not
 grant the relief prayed, or any part of the same.

2. It appears that the report and order of the Interstate Com-
 merce Commission were regularly made and entered, after full hear-
 ing and on evidence adduced on issues made by the proper parties
 before the Commission, and the petition does not show any lack
 of power or authority on the part of the Commission to make and
 enter the order now sought to be annulled and enjoined.

3. The petition does not show that there is, or may be, any con-
 fiscation of property of petitioners, or that the petitioners have been
 deprived of any right protected by the Constitution of the
 55 United States, or of any other right within the jurisdiction
 of the Court to protect.

4. The petition is otherwise vague, uncertain, indefinite and in-
 sufficient.

Wherefore, respondent prays that its said motion be sustained.

BLACKBURN ESTERLINE,

Special Assistant to the Attorney General.

PERRY B. MILLER,

United States Attorney, Western District of Kentucky.

55½ The opinion of Interstate Commerce Commission, in In-
 vestigation and Suspension Docket No. 520, mentioned in
 the præcipe, will be found on pages 60-119 of this record.

56 *Motion to Dismiss the Petition and Answer of the Interstate
Commerce Commission.*

Filed March 27th, 1916.

In the District Court of the United States for the Western District of
Kentucky.

In Equity. No. 33.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, a Corporation;
St. Louis, Iron Mountain & Southern Railway Company, a
Corporation; and the Chicago, Rock Island and Pacific Railway
Company, a Corporation, Petitioners,

vs.

UNITED STATES OF AMERICA, Respondent, and INTERSTATE COM-
MERCE COMMISSION, Intervening Respondent.

Motion to Dismiss and Answer of the Interstate Commerce Com-
mission.

The Interstate Commerce Commission, having entered its appear-
ance as Respondent in the above-entitled cause, says:

I.

That the petition herein does not present a justiciable issue triable
by this Court, in, that it does not appear that this respondent was
without jurisdiction under the Act to Regulate Commerce to enter
the order complained of; or that this respondent did not grant a
full hearing to the parties before the entry of said order; or that
there was any irregularity in the proceedings before this respondent
prior to the entry of said order; nor does the petition set forth any,

or sufficient, facts to show confiscation of the property of
57 petitioners, or of either of them, or any other violation of
the constitutional rights of the petitioners, or either of them,
entitling them, or either of them, to the relief, or any part thereof,
prayed for. This respondent, therefore, moves to dismiss the peti-
tion.

II.

Without waiving its motion to dismiss, and for the purposes of
this suit, this respondent admits the allegations in Paragraphs I
and II of said petition.

III.

This respondent, for the purposes of this suit, admits the allega-
tion in Paragraph III of the petition, but for more full and accurate
information as to the complaint by Paducah Board of Trade filed

with this Commission, this respondent insists upon the production of a certified copy of said petition by the petitioners upon the hearing of this cause.

IV.

This respondent, for the purposes of this suit, admits the allegation in Paragraph 5 of said petition, and files herewith as a part of its answer, and as Exhibit A, a copy of the report and order of January 21, 1916, referred to in said paragraph.

V.

This respondent denies that said order of this respondent dated January 21, 1916, was or is void for any or either of the alleged reasons set forth in Paragraph VI of said petition.

VI.

This respondent denies each and every allegation contained in Paragraph VII of said petition.

VII.

Further answering said petition, this respondent says:
58 That in a certain proceeding before this respondent known as Investigation and Suspension Docket No. 520, to which proceeding petitioners, and each of them, were parties, the rates on lumber from southern points to the Ohio River crossings and other points and their reasonableness were under consideration and for determination by this respondent; that in the proceeding last mentioned the rates on lumber to Cairo, Ill., were investigated and their reasonableness determined by this respondent; that the report in said proceeding is found in 34 I. C. C. reports beginning at page 652, a copy of which, together with the order entered thereon, is hereto attached, marked Exhibit B, and to which this respondent begs leave to refer upon the hearing hereof.

VIII.

This respondent, further answering said petition, and each paragraph thereof, alleges that it had jurisdiction of the matters in controversy and of the petitioners, and each of them, in the proceeding before it in which the order in controversy was entered; that it proceeded in the investigation and hearing of said cause before it in accordance with the provisions and requirements of the Act to Regulate Commerce, as amended; that there was substantial evidence to support its findings and the order in controversy; that no constitutional rights of the petitioners, or of any of them, have been, or are, violated or impaired by the said order in controversy, and that the findings of fact by this respondent in

said proceedings before it, and the order entered thereon, were and are final and conclusive upon the petitioners herein.

This respondent therefore denies that the petitioners are entitled to the relief prayed for in said petition, or any part thereof.

Having answered the said petition, this respondent prays that its motion to dismiss said petition may be granted, and that
59 it may have its reasonable costs and charges in its behalf sustained.

INTERSTATE COMMERCE COMMISSION,
By JOS. W. FOLK,
CHAS. W. NEEDHAM, *Counsel*.

CITY OF WASHINGTON,
District of Columbia, ss:

Balthasar H. Meyer, being duly sworn, says that he is a member of the Interstate Commerce Commission, and makes this affidavit upon its behalf; that he has read the foregoing answer and knows the contents thereof, and that the same is true according to his best knowledge and belief.

BALTHASAR H. MEYER.

Subscribed and sworn to before me, George B. McGinty, a Notary Public in and for the District of Columbia, this 24th day of March, A. D. 1916.

[SEAL.]

GEORGE B. MCGINTY,
Notary Public in and for the District of Columbia.

59½ Exhibit "A" filed with the answer of the Interstate Commerce Commission will be found copied on pages 27-36 of this record.

60 Exhibit "B" filed with the answer of the Interstate Commerce Commission on March 27, 1916, is as follows:

3096.

Interstate Commerce Commission.

Investigation and Suspension Docket No. 520.

Rates on Lumber from Southern Points to the Ohio River Crossings and Other Points.

61 Investigation and Suspension Docket No. 520.

Rates on Lumber from Southern Points to the Ohio River Crossings and Other Points.

Submitted April 26, 1915. Decided July 12, 1915.

1. Proposed increased rates on yellow-pine lumber from the southwestern blanket to St. Louis, Mo., and East St. Louis, Thebes, and Cairo, Ill., not shown to be reasonable.

2. The evidence of record does not show that the rates from Little Rock, Ark., and Pine Bluff, Ark., should be increased to the blanket basis.
 3. Proposed increased rates on hardwood lumber to St. Louis and Cairo from the territory embraced in the yellow-pine blanket not shown to be reasonable, but increase in the rates on hardwood to the level of the present rates on yellow pine justified.
 4. Proposed increased rates on lumber, all kinds, from the territory north of the Arkansas River to St. Louis, East St. Louis, Thebes, and Cairo not shown to be reasonable.
 5. Proposed increased rate on yellow pine from points on the Kansas City Southern Railway to St. Louis not justified.
 6. Proposed basing rate to Thebes and Cairo from certain stations on the Memphis branch of the Chicago, Rock Island & Pacific Railway shown to be reasonable. Increases in the rates to Memphis from certain stations on this line also justified.
 7. Proposed increased rates to Thebes and Cairo from certain stations on the Missouri & North Arkansas Railroad shown to be reasonable.
 8. Cancellation of local rate to Cairo from points on the Texas & Pacific Railway not justified.
 9. Proposed increased rates from stations on the Chicago, Rock Island & Pacific Railway to Louisville, Ky., and Cincinnati, Ohio, not shown to be reasonable.
 10. Proposed increased rates on lumber, all kinds, to New Orleans, La., from groups of stations in the southwestern territory, not justified.
 11. Increases not exceeding 1 cent per 100 pounds in the rates on lumber justified from Mississippi Valley territory and southeastern territory to the north bank Ohio River crossings in those instances in which such increases are necessary to effect a spread of 1 cent between opposite crossings. Proposed rates to St. Louis also shown to be reasonable to the extent that they do not exceed by more than 1 cent the rates now in effect.
 12. Proposed increased rates to Ohio River crossings from points on the Texas & Pacific Railway, Vicksburg, Shreveport & Pacific Railway, and Southern Pacific system lines in Louisiana, shown to be reasonable.
 13. The record shows that cottonwood and gum lumber are not entitled to lower rates than other hardwood lumber.
 14. Proposed increased rates from Cincinnati, Ohio, to western termini and points in trunk line territory, not justified.
- 62 S. D. Snow for Wisconsin Lumber Company.
 T. M. Henderson for Nashville Lumbermen's Club.
 G. B. Webster for Ozark Cooperage Lumber Company, Mill Shoals Cooperage Company, Bolz-McBride Cooperage Company, Gideon Cooperage Company, and United States Stave & Handle Company.
 G. F. Thomas for Arkansas Southern Manufacturers Association.
 T. K. Riddick for Memphis Freight Bureau.
 Andrews, Streetman, Burns & Logue and R. H. Kelley for Kirby Lumber Company.

J. V. Norman for Norman Lumber Company and New Albany Box & Basket Company.

W. A. Glasgow, Jr., for Brooklyn Cooperage Company.

S. F. Andrews for Lumbermen's Exchange of St. Louis.

L. M. Walter, J. S. Burchmore, and J. R. Walker for other protestants.

S. H. West, E. A. Haid, F. H. Wood, W. F. Dickinson, H. G. Herbel, Thomas Bond, J. M. Souby, C. S. Burg, T. J. Freeman, and Fred G. Wright for southwestern lines.

S. R. Prince, C. B. Northrop, and A. M. Bull for Southern Railway Company in Mississippi.

R. Walton Moore, C. D. Drayton, and C. J. Rixey, Jr., for southeastern and Mississippi Valley lines.

W. A. Northcutt for Louisville & Nashville Railroad Company.

C. B. Cardv for Chicago & Eastern Illinois Railroad Company.

W. W. Collin, Jr., and D. P. Connell for New York Central lines and Pennsylvania lines.

T. J. Norton and J. J. Coleman for Atchison, Topeka & Santa Fe Railway Company.

Report of the Commission.

McCHORD, Chairman:

This proceeding resulted from the filing and suspension of tariffs proposing to increase the rates on lumber and articles taking the same rates from the producing regions of the southwest, the Mississippi Valley, and the southeast to St. Louis, Mo., East St. Louis, Thebes, and Cairo, Ill., Memphis, Tenn., and the Ohio River crossings. The proposed increases average about 1 cent per 100 pounds, though in some instances, which will be detailed later, the proposed rates are several cents higher than the rates now in effect. The protestants are lumbermen, lumber associations, chambers of commerce, and similar organizations. The tariffs involved have been suspended by appropriate orders until July 28, 1915.

The territory of production involved in this proceeding may be more fully described as follows: (1) The southwestern territory, including part of Oklahoma, Missouri, and northern Arkansas, and the territory embraced in the so-called southwestern yellow-pine blanket, bounded on the north by the Arkansas River, on the east by the Mississippi River, on the south by the Gulf of Mexico, and on the west by a line drawn through Kansas City, Mo., and Houston, Tex.; (2) Mississippi Valley territory, described generally as the region lying east of the Mississippi River and on and west of the line of the Mobile & Ohio Railroad; (3) southeastern territory, embracing the states of Georgia and Florida, and parts of Alabama and Tennessee.

It should be stated at the outset that the methods of constructing through rates from the territories of origin to points in central freight association territory and trunk line territory are not uniform. From the southwest the local rates to the gateways are generally used also

as proportional rates and are added to other local or proportional rates beyond the gateway to make the through rates. Rates herein are stated in cents per 100 pounds. The present yellow-pine rate from the blanket to Cairo, Ill., for example, is 16 cents, both local and proportional. The rate from Cairo to Chicago, Ill., is 10 cents, making a through rate of 26 cents. It is important to observe that the southwestern lines propose to increase only the local rates to the gateways, and that they expressly disclaim any present intention of increasing the through rates to points beyond the gateways. On the other hand, the Mississippi Valley lines and the southeastern lines, while they have not yet increased the through rates, state that it is their intention to do so if the proposed rates to the crossings are permitted to take effect. From Mississippi Valley territory to the consuming territory north of the Ohio River through rates are made by combination upon the Ohio River crossings, except in a few cases, and they are in some cases published as joint through rates. The only increases from Mississippi Valley territory involved in this proceeding, however, are the rates to the crossings, though witnesses on behalf of the Mississippi Valley lines stated that if the proposed increases were allowed there would be a corresponding readjustment of the joint through rates.

From southeastern territory there is a dual system of rates, one set being the rates to the crossings proper and the other the proportional or basing rates. The same increases are proposed in both, but as yet no change has been made in the through rates, though these lines also state that their through rates will be revised if the increases here proposed are permitted to become effective.

Proposed Increases from the Southwest.

From the southwestern yellow-pine blanket the respondents propose an increase of 1 cent in the blanket rates on yellow pine and cypress to Thebes, Cairo, St. Louis, and East St. Louis. Similar increases are proposed in the rates on hardwood, except that
 64 the increases are greater than 1 cent in those instances where the present rates on hardwood are less than the rates on pine. In most cases the proposed rates on the hardwoods are the same as the proposed rates on yellow pine. Increases are also proposed in the rates on all kinds of lumber from stations in Arkansas north of the Arkansas River to the gateways named. Numerous other increases from this territory are proposed and will be discussed later.

The History of the Rates in Question.

The history of the rates on lumber from the producing territories both east and west of the Mississippi River has played a prominent part in this proceeding. It has been used principally by the carriers to show that the rates in question were the result of the strongest competitive influences, and by the shippers to show that they have been increased from time to time until they now yield a reasonable remuneration.

The record shows that the production of yellow-pine lumber west of the Mississippi River began in the so-called Grandin-Leeper district in the southeastern part of Missouri. At that time the white pine of the north moved in considerable volume to St. Louis and Kansas City. When the producers of yellow pine in Missouri endeavored to market their product in St. Louis and Kansas City they found the consumers prejudiced against yellow pine and southern lumber generally. In order to stimulate the production of yellow pine the carriers made the same rates from Grandin to Kansas City, and from Leeper to St. Louis, as were in effect from Chicago to the same points on white pine, 15 cents and 8 cents per 100 pounds, respectively. Later the production of yellow pine extended south of the Arkansas River, and the rate from this territory to St. Louis was made 7 cents higher than the Grandin-Leeper rate, or 15 cents. The rate to Thebes and Cairo was made only 2 cents under the St. Louis rate, this being the differential maintained by the lines operating on the east side of the river. The rate to Thebes and Cairo from the territory south of the Arkansas River thereby became 13 cents. As the center of production extended southward the 13-cent rate to Cairo and the 15-cent rate to St. Louis were likewise extended southward beyond the Arkansas-Louisiana state line as far as Shreveport on the St. Louis Southwestern and Monroe on the St. Louis, Iron Mountain & Southern. From territory still farther south in Louisiana and Texas the rate to St. Louis and Cairo was 22 cents. In 1899 the 13-cent and 15-cent rates to Cairo and St. Louis, respectively, were increased 1 cent, making the rate to Cairo 14 cents and to St. Louis 16 cents, while the 22-cent rate from southern Louisiana and Texas was reduced to 16 cents to Cairo and 18 cents to St. Louis.

65 In 1903 the rates from the territory south of the Arkansas River were increased to 16 cents to Cairo and 18 cents to St. Louis, so that the rates of 16 cents and 18 cents applied as blanket rates from all territory between the Arkansas River and the Gulf of Mexico. The blanket thus created is about 400 miles long and 300 miles wide.

In *Chicago Lumber & Coal Co. v. T. S. Ry. Co.*, 16 I. C. C., 323, decided May 4, 1909, producers of yellow pine in Arkansas and northern Louisiana alleged that the increase of 2 cents in the rates from their territory, made by the carriers to create the blanket, were unreasonable and unjustly discriminatory. We found that the rates were not shown to be unreasonable, that the evidence of record did not warrant any disturbance of the blanket adjustment, and that transportation conditions west of the Mississippi River were sufficiently different from those east of the river to warrant higher rates from the southwest than from the southeast.

In *Lumbermen's Exchange of St. Louis v. A. & S. R. R. Co.*, 24 I. C. C., 220, decided May 6, 1912, formal complaint was made against a further increase in the rate to St. Louis to 19 cents. We held, however, considering the average haul to St. Louis from the blanket to be 565 miles, that the rate was not unreasonable, and the complaint was dismissed. Since that time the blanket rates on yellow

pine have been 16 cents to Cairo and 19 cents to St. Louis. In *Wisconsin & Arkansas Lumber Co. v. St. L., I. M. & S. Ry. Co.*, 33 I. C. C., 33, decided January 12, 1915, producers of lumber located in Arkansas south of the Arkansas River filed a complaint in which they alleged that the rates from the northern part of the blanket to the gateways were unreasonable and unjustly discriminatory, and prayed that the blanket be divided at the Arkansas-Louisiana state line. We held that the evidence of record failed to show that the rates were either unreasonable or unjustly discriminatory, and that the division of the blanket in the particular manner suggested by the complainants was impracticable. The complaint was dismissed.

The principal reasons given by the southwestern lines for the increases are these: (1) They need more revenue; (2) the rates are unusually low, having been made for the purpose of aiding an industry which was struggling to overcome the prejudices against it and market its product in competition with other woods; (3) the prejudice no longer exists and competition is almost a thing of the past; (4) water competition, which originally influenced the rail rates, is now negligible.

The Financial Condition of the Southwestern Lines.

Protestants and respondents have vied with each other in exhibiting the financial weakness of their respective industries, and a large portion of the record consists of testimony purporting to show, 66 on the one hand, that nothing can save some of the respondents from receiverships if the proposed increases are denied, and on the other that any increase in freight charges would wipe out completely the small margin of profit upon which the producers and shippers of lumber are now operating. The record shows that for more than a year there has been an unusual depression in the lumber business; that the demand for lumber has decreased decidedly; that many mills have been forced to close down, and that those which have continued to operate are doing so either at a loss or with small returns. On the other hand, the respondents show that their expenses have increased so rapidly, while the transportation charges have remained stationary, that a number of them are in the hands of receivers and others in poor financial condition.

A consolidated statement, filed on behalf of 26 southwestern lines, shows that from 1903 to 1914 their operated mileage increased from 24,897 miles to 34,012 miles, and that their total operating revenue increased during the same period from \$166,516,598 to \$287,116,009. In spite of this material growth in the size of the roads and in their gross revenue, the net operating income decreased during the same period from \$45,269,265 to \$44,174,782, the average net operating income for the whole period being only \$48,936,513. The ratio of net operating income to property investment account of these roads in 1903 was 4.78 per cent, while in 1915 it had fallen to 2.84 per cent. Our attention is especially directed to the fact that the average ratio of net operating income to property investment account

of these lines for this period was 3.78 per cent, while it was shown in the Five Per Cent case, 32 I. C. C., 325, at page 343, that for approximately the same period the average ratio of net operating income to property investment account for 35 railway systems in official classification territory was 5.41 per cent.

The increase in operating expenses is said to be due, among other things, to numerous laws enacted by the states and the federal government which made it necessary for these carriers to increase the number of their employees, shorten the hours of labor, and make heavy expenditures for safety appliances. It further appears that the scale of wages has risen materially since 1903. An exhibit filed by the southwestern lines shows that if the scale of wages in 1914 had been the same as in 1903 the amounts paid for wages during the last fiscal year would have been \$20,000,000 less than they actually were. Other exhibits filed on behalf of these respondents show that their operating income per mile of road decreased from \$2,414.81 in 1907 to \$1,795.02 in 1914, and they estimate that they are now earning 6 per cent on a valuation of \$15,364.16 per mile of road.

It seems fairly to appear from the evidence that the southwestern lines, taken collectively, are not prosperous. It does not
67 necessarily follow, however, that they should get all or any of the additional revenue by means of an increase in the rates on lumber, for it may be that lumber is at present contributing its fair share of revenue.

Proposed Increases in Yellow-pine Blanket Rates.

The most important increases west of the Mississippi River are those proposed in the rates on yellow-pine lumber from the blanket to St. Louis, East St. Louis, Cairo, and Thebes. The present and proposed rates are, to St. Louis and East St. Louis, 19 cents and 20 cents; and to Thebes-Cairo, 16 cents and 17 cents.

The record sustains the respondents' contention that the competition with white pine from the north has almost, if not quite, disappeared. The contest between yellow pine and white pine which began in the eighties has ended in an almost complete victory for yellow pine. *Northern Pine Mfrs. Asso. v. C. & N. W. Ry. Co.*, 33 I. C. C., 360.

An exhibit was filed by respondents showing the number of cars of yellow pine moving from the blanket to St. Louis, East St. Louis, Cairo, and Thebes during six alternate months, beginning with November, 1911, and ending with September, 1912. The exhibit, which is here reproduced, shows also the actual weight of the shipments during that period, the revenue which would accrue under the proposed rates, the tons hauled 1 mile, the average weight per car, and the average revenue per ton-mile under the proposed rates:

Consolidated Statement Showing Movement of Yellow-pine Lumber from So-called Blanket Rate Territory to Destinations Shown.

[This exhibit was prepared from abstract sheets furnished in connection with I. C. C. Docket No. 4907 and represents total actual movement to destinations shown for months of November, 1911, January, March, May, July, and September, 1912, from all roads (I. C. R. R. and M. & N. A. R. R. excepted) listed as defendants in that docket, the revenue shown being on the basis of the suspended rates under consideration in this case.]

From—	Number of cars.				Total.
	1 line.	2 lines.	3 lines.	4 lines or more.	
St. Louis proper.....	1,384	2,876	567	329	5,156
East St. Louis proper, also Venice, Madison, Granite City.....	417	782	135	19	1,353
Cairo proper.....	81	851	205	4	1,141
Thebes proper.....	7	264	54	2	327
Total.....	1,889	4,773	961	354	7,977

From—	Weight.	Revenue.	Tons 1 mile.	Average weight per car.	Average haul per ton.	Average revenue per ton- mile.
	<i>Tons.</i>			<i>Tons.</i>	<i>Miles.</i>	<i>Mills.</i>
St. Louis proper..	121,084	\$484,336.00	84,357.796	23.48	696.69	5.741
East St. Louis proper, also Ven- ice, Madison, Granite City...	32,137	128,548.00	21,801.000	23.75	678.38	5.896
Cairo proper.....	27,075	92,057.07	16,467.285	23.73	608.21	5.590
Thebes proper....	7,698	26,173.90	4,444.310	23.40	577.29	5.889
Total.....	187,994	731,114.97	127,070.391	23.57	675.93	5.754

68 The respondents call our attention particularly to the fact that the average haul from the blanket is steadily increasing as the center of production moves southward, and advance that fact as one justification for the proposed increases. In *Lumbermen's Exchange of St. Louis v. A. & S. R. R. Co.*, supra, we accepted the average distance of 565 miles given by the complainant, and held that the rate of 19 cents, yielding a revenue of 6.72 mills per ton-mile, was reasonable. The respondents compare that revenue per ton-mile and that distance with those shown in the above table and reach the conclusion that the comparison tends to establish the reasonableness of the proposed rates.

The fact that the average haul increases in length as the timber is cut away in the northern part of the blanket can not be accepted as a justification for continual increases in the blanket rate. The blanket was voluntarily created by these respondents. Originally the center of production was considerably farther north than it is now, and for that reason the carriers profited by the relatively short hauls from the blanketed area; and to that extent also the shippers operating in the northern part of the blanket, where the production was heaviest, were at a disadvantage in having to pay for their relatively

short hauls a blanket rate which covered a vast territory. When shippers in the northern part of the blanket complained of their rates the carriers were prompt to reply that the reasonableness of the blanket rate must not be gauged by the short distances from the complainants' mills, and that in any group system of rates distance must necessarily be disregarded. Obviously the rule should work both ways. The carriers having disregarded distances of several hundreds of miles in creating and maintaining the blanket, they should not be heard to say that the gradual southward movement of the center of production is in itself a justification for an increase in the blanket rate. Moreover, under these circumstances comparisons of ton-mile earnings do not have the significance or the value which they ordinarily have. We can not agree, therefore, that our conclusion in the St. Louis Lumbermen's case establishes the reasonableness of the suspended rates.

It is shown on behalf of the respondents that the rates in question were made under the strongest competitive influences; that the competition of water lines was at first severely felt and reflected in the rates; and that "water competition is not the bugaboo to railroad men that it formerly was." It is especially urged on behalf of the carriers that the rates originally established were "missionary" rates, made to enable a struggling industry to establish itself, and that inasmuch as the lumber industry is no longer in its infancy there is no further need of continuing the low rates.

69 This argument loses sight of the fact that the rates in question have been raised from time to time. We have already pointed out that the rate to St. Louis from the northern part of the blanketed territory was originally 15 cents, whereas it is now 19 cents, and it is proposed to increase it to 20 cents by the suspended tariffs. If the fact that a rate was originally established under strong competitive influences is to be accepted as alone sufficient to prove the reasonableness of an increase in the rate, it must obviously be true that the respondents could justify any number of successive increases in a rate simply by referring to its history. Furthermore, the elimination of the competitive conditions is not the only change in conditions which has occurred since the establishment of the low rates. The respondents' own testimony shows, for example, that the mileage owned and operated by them has increased substantially 50 per cent since 1903. Lumber moves in much greater volume to-day than it did in the early days. Weak railroads which originally operated under the most trying conditions have been purchased by stronger lines and consolidated into great systems, and in various ways transportation economies have been effected.

The respondents have vividly depicted the unusual difficulties incident to operating the lines west of the Mississippi River. We are told that a number of the lines traverse the lowlands adjoining the Mississippi River, and that they are frequently subject to overflow. Floods are frequent, bridges are destroyed, and the expense occasioned by damage to roadbed and trestles by the swelling of small streams is said to be enormous. We are told that the rivers change their channels; that an expensive bridge is built to-day, only to find

to-morrow that the river is no longer there; and that such a prominent line as the Rock Island has "had to drive piling, anchor the tracks, tie them to trees, and resort to other methods" to keep its tracks and roadbed from being washed away.

We have recognized in previous cases the difficulties which the lines west of the Mississippi River encounter, and for that reason we approve in the Chicago Lumber & Coal case, *supra*, rates somewhat higher from the southwest territory than those in effect from the territory east of the river, where the operating conditions are admittedly better. It does not appear that operating conditions to-day are any worse west of the river than they have been, and there would therefore seem to be no reason for holding that the operating difficulties constitute a justification for the proposed rates. It appears, on the other hand, that the territory west of the Mississippi River has developed to a marked degree since 1903. Not only have the respondents' lines increased in size and in strength, but the population and tonnage have increased.

70 The fact that the respondents are not in good financial condition can not be held to justify the proposed rates. It is a matter of common knowledge that lumber is a low-grade commodity, and that from a transportation point of view it is one of the most desirable commodities. Ordinarily it yields large returns to the carriers. Nothing appears of record in the present case to convince us that the present rates from this territory are in any respect unremunerative or that the carriers' revenues should be replenished by an increase in the rates on yellow-pine lumber.

The respondents show that commendable efforts have been made by some of them to conserve their revenues, with gratifying results, and the St. Louis & San Francisco Railroad is chosen as typical. It is shown that during the period beginning June 30, 1913, and ending November 30, 1914, that carrier, by increasing its trainloads, reducing the amounts paid for loss and damage, reclaiming scrap material, and in numerous other ways, effected a saving of \$931,526. The extent to which the other carriers in the southwest have been able to conserve their revenues is not shown of record, but the evidence just detailed suggests that it is possible to better materially the financial condition of these lines without an increase in the rates on lumber.

Considerable emphases is laid by the respondents on the fact that the proposed blanket rate of 20 cents to St. Louis compares favorably with the present rate of 24 cents to Kansas City, Mo. We do not think this comparison controlling. The respondents' evidence shows that the reasonableness of the St. Louis rate must be gauged in the light of its peculiar history. The record does not show that the competition at Kansas City is so severe as the competition at St. Louis. Moreover, we have never passed upon the reasonableness of the 24-cent rate to Kansas City.

We are of opinion and find that the proposed increased rates on yellow pine from the blanket territory to St. Louis, East St. Louis, Thebes, and Cairo have not been shown to be reasonable.

Proposed Increases From Little Rock and Pine Bluff to Memphis.

The blanket rate to Memphis is 14 cents. In *Ferguson Saw Mill Co. v. St. L., I. M. & S. Ry. Co.*, 18 I. C. C., 391, decided May 2, 1910, the complainant, a manufacturer of lumber at Woodson, Ark., alleged that the rate of 14 cents from the Woodson and Little Rock to Memphis was unreasonable. The evidence taken in that case showed that for many years the Little Rock & Memphis Railway was the only line connecting Little Rock and Memphis, and that until the construction by the St. Louis, Iron Mountain & Southern Railway of a line between those points the published rate from Little Rock to Memphis was 8 cents, though most of the lumber moved at special rates, which were even lower. In 1903 the rate on pine was increased to 10 cents, in 1907 to 12 cents, and in 1909 to 14 cents, the rate attacked in the case cited. The defense was that the matter was res adjudicata, the Commission having approved the blanket adjustment in the *Chicago Lumber & Coal Co.* case, *supra*. We observed, however, that our approval of the blanket in the case cited was expressed with an important qualification, as follows:

Unless necessary to the correction of rates found to be excessive and unreasonable from a part of the territory, we see no reason, under all the circumstances appearing, for interference in the present adjustment.

Commenting upon this qualification we said, at page 393:

This language expressly disclaims any intention of precluding a shipper located within the territory covered by the adjustment from bringing his complaint against particular rates alleged to be unreasonable. If such a complaint is made, it becomes the duty of the Commission to investigate the same and determine the reasonableness of the rates assailed. It may be generally true that a system of blanket rates from a producing section is fair and just to all parties concerned, although it necessarily involves rates that are somewhat high for the distance from points on the edge of the blanket nearest the points of destination, but in making such an adjustment the burden rests upon the carrier to provide rates that shall not be unreasonable from any point of origin.

The contention that any change in the rates involved in this complaint will disrupt the established adjustment is hardly a reasonable deduction from the facts disclosed. Little Rock and Woodson have not been included in this adjustment for any considerable period of time. They were, as a matter of fact, for many years on the southern edge of a zone with a rate of 8 cents to Memphis. They were subsequently transferred to the northerly edge of a zone extending from the Arkansas River to the Gulf of Mexico, and at approximately the same time the rate from this southern zone was increased. The net result of the readjustment gave to the points in question in rapid succession two material increases in rates which carried them up from 8 to 14 cents, and the record shows that complainant was the principal shipper affected thereby.

We also compared the rate of 14 cents with a rate of 9 cents in effect from stations immediately north of Little Rock, and concluded

"that the present rate on lumber from Little Rock and Woodson is unreasonably high for such a low-class traffic as lumber." We prescribed a maximum rate of 10 cents.

In *Sawyer & Austin Lumber Co. v. St. L., I. M. & S. Ry. Co.*, 21 I. C. C., 464, the rate of 14 cents from Pine Bluff to Memphis was also assailed. We held, for reasons similar to those given in the Ferguson case, *supra*, that it was unreasonable to include Pine Bluff within the blanket, and prescribed a rate of 11 cents as a maximum rate on yellow pine from Pine Bluff to Memphis.

In the present proceeding the respondents propose to reinstate Little Rock and Pine Bluff in the blanket by advancing the rates from both points to 14 cents. The reasons given for the proposal are, first, that the Arkansas River constitutes a natural and logical northern boundary for the blanket; second, that there are mills located at points near Little Rock and Pine Bluff, such as Perla, Bigelow, Malvern, Clio, and Benton, Ark., which get their timber from the same general region as the Little Rock and Pine Bluff interests, and that inasmuch as the blanket rate applies from these other points the present adjustment gives Little Rock an unfair advantage; third, the 9-cent rate from points north of Little Rock, used by the Commission as a basis for comparison, applied not only from McAlmont and Galloway, Ark., the two points to which the Commission referred, but to a group of stations, the average distance from which to Memphis is 100 miles and the average revenue per ton-mile 18 mills, whereas the Commission considered only the actual distances of 141 miles and 124.5 miles from McAlmont and Galloway to Memphis. Respondents say in their brief:

From a reading of the opinion of the Commission in the Ferguson case, *supra*, it appears that that decision was based wholly on the fact that from Galloway, which is about 9 miles east of Little Rock on the Rock Island, and from McAlmont, which is about 7 miles north of Little Rock on the Iron Mountain, both being outside of the natural boundaries of the blanket, the rate to Memphis was 9 cents. This, however, is not an unusual situation.

A fair reading of our report in the Ferguson case will show that our opinion in that case was not based wholly, or even principally, on the fact that a rate of 9 cents applied from Galloway and McAlmont.

The contention that the Arkansas River constitutes a natural line of demarcation between the blanketed territory and the region to the north from which lower rates are published to the gateways is not without merit. We gave consideration to this matter in the Ferguson case, however, and there reached the conclusion that the blanket was not to be deemed so inviolable as to preclude a shipper from bringing into issue the reasonableness of particular rates. The respondents' unconcealed apprehension that the maintenance of lower rates from these points will lead to further demands for similar rates does not prove that the present rates are not reasonably high. Their contention that undue discrimination will result if the rates from points south of the Arkansas River are not made uniform is weakened by the fact that the adjustment which they propose in the

rates on hardwood provides rates lower than the blanket rate from a number of points immediately south of the Arkansas River. Our conclusion in the Ferguson case was that the rate of 14 cents from Little Rock to Memphis, a distance of 148 miles, yielding a revenue of 19 mills per ton-mile, was unreasonable. There is nothing in the record in the present case which would warrant a reversal of that finding. What has been said with reference to the rate from Little Rock to Memphis applies with equal force to the rate from Pine Bluff. We therefore find that the proposed rate of 14 cents from these points to Memphis has not been shown to be reasonable.

Proposed Rates on Hardwood from the Yellow-Pine Blanket.

The rates on hardwood from a large part of the territory embraced in the yellow-pine blanket have for years been somewhat less than the rates on yellow pine. From the northern part of Louisiana the rate on hardwood has been generally 2 cents less than the yellow-pine rate. From western and southeastern Arkansas the differential has been generally 3 cents. In *Northbound Rates on Hardwood*, 32 I. C. C., 521, decided January 12, 1915, the southwestern lines proposed various increases in the hardwood rates for the purpose of bringing them up more nearly to the yellow-pine basis. In our report in that case we permitted the proposed increases, with a few exceptions. The general effect of our conclusions was to make the rates on hardwood the same as the rates on yellow pine from practically all points in Louisiana and points in the southwestern part of Arkansas. The protestants petitioned for a reconsideration of the matter, and it was further argued in conjunction with the present case. In our supplemental report, 34 I. C. C., 708, we adhered to our original conclusions. In the present case the respondents propose to increase all rates on hardwood from the blanket as far north as Malvern, Draughon, and Arkansas City, Ark., to the proposed yellow-pine blanket basis, 20 cents to St. Louis, and 17 cents to Thebes and Cairo. The proposed rates on hardwood from the territory north of Malvern, Draughon, and Arkansas City as far as the Arkansas River are 2 cents lower than the proposed blanket rates and 1 cent below the blanket rates now in effect.

As a result of our conclusions in *Northbound Rates on Hardwood*, supra, the blanket rates were applied to hardwood as far north as the Arkansas-Louisiana line from Junction City, Ark., east, and to a large territory in southwestern Arkansas and eastern Texas. The tariffs suspended in the present proceeding contain increases which will have the effect of extending the application of the blanket rate as far north, generally speaking, as the Malvern-Draughon-Arkansas City line.

We have held earlier in this report that the respondents have not justified the proposed increased rates of 17 cents and 20 cents on yellow pine from the blanket territory to Thebes-Cairo and St. Louis, respectively. As there appears to be no reason for allowing higher rates on hardwood than on yellow pine, we also find that the

74 proposed rates of 17 cents and 20 cents on hardwood have not been shown to be reasonable. There remains to be considered the question whether the 19-cent blanket rate should be extended northward in the manner indicated in the preceding paragraph. In our reports in *Northbound Rates on Hardwood*, *supra*, we considered the protestants' objections to the proposed increases and held that there is no reason, from a transportation viewpoint, why the rates on hardwood should not be as high as the rates on yellow pine. The protestants' principal contention, that the average length of haul from the blanket is considerably shorter for hardwood than yellow pine, has been considered in our supplemental report in the case cited, in which we held that the difference in distance was not sufficient to warrant us in making a difference in the rates compulsory. The same reasoning applies with greater force in considering the proposed increases in the rates on hardwood from the northern part of the blanket, for from this territory the hauls on yellow pine and hardwood are of practically the same length. We are therefore of opinion and find that the proposed increases in the rates on hardwood from the territory embraced in the so-called yellow pine blanket to St. Louis, East St. Louis, Thebes, and Cairo have been shown to be reasonable to the extent that they do not exceed the present yellow-pine blanket rates to the gateways named. Protestants' contention that gum lumber should take lower rates than other hardwood will be considered later in this report.

Proposed Increases North of the Arkansas River.

We have already referred to the fact that the suspended tariffs propose to increase the rates on all kinds of lumber to St. Louis, East St. Louis, Thebes, and Cairo from the territory north of the Arkansas River. The increases are in some cases 1 cent and in others 2 cents. The proposed adjustment on the main line of the St. Louis, Iron Mountain & Southern is typical. Beginning at Delaplaine, located in the northeastern part of Arkansas a short distance south of the Missouri-Arkansas state line, the rates on all kinds of lumber from stations Delaplaine to Hoxie, inclusive, have been increased from 13 cents to 14 cents to St. Louis and East St. Louis and from 10 cents to 11 cents to Cairo and Thebes. From a group of stations immediately south of those last mentioned, Minturn to Tuckerman, inclusive, the rates to St. Louis and East St. Louis have been increased from 13 cents to 15 cents, and to Cairo and Thebes from 10 cents to 12 cents. Proceeding south toward the Arkansas River there are several other small groups from which the rates to the gateways named have been increased 2 cents. From the group of stations immediately north of the Arkansas River, Ward to Rixey Spur, inclusive, the proposed rate to St. Louis and East St. Louis is 75 18 cents, and to Thebes and Cairo 15 cents, 2 cents higher than the present rates and 1 cent lower than the present rates from the yellow-pine blanket. Rates from stations on the White River branch of this road, which connects with the main line at Diaz, Ark., are increased 1 cent. The stations along this branch

are grouped similarly to those on the main line. The first group after leaving the main line includes the stations from Reamy to Cushman, the rates from which have been increased from 15 cents to 16 cents and from 12 cents to 13 cents.

It is unnecessary to describe in detail the increases proposed by the other north and south lines in this territory, for they are similar to those on the St. Louis, Iron Mountain & Southern. On the Helena branch of the latter road, extending from Knobel to Helena, there are several groups of stations from which the proposed increases vary from half a cent to 3 cents. From Helena and West Helena it is proposed to increase the rates to St. Louis and Thebes-Cairo from 12 cents to 15 cents and from 10 cents to 13 cents, respectively. Increases averaging 2 cents have also been made on the Memphis, Helena & Louisiana division of the St. Louis, Iron Mountain & Southern, as well as from stations on the St. Louis Southwestern Railway from Dalby, in the northeastern part of the state, as far south as the Arkansas River. South of the Arkansas River the proposed rates are on the yellow-pine blanket basis, with the exceptions already noted.

The rates from stations on the St. Louis & San Francisco Railroad apply from small groups similar to those on the St. Louis, Iron Mountain & Southern. On the branch which runs through Poplar Bluff, Mo., to Hoxie, Ark., the rates on all kinds of lumber from stations Datto to Hoxie, inclusive, have been increased from 13 cents to 14 cents to St. Louis-East St. Louis, and from 10 cents to 11 cents to Thebes-Cairo. On the main line from St. Louis to Oklahoma, beginning at Wyandotte, Okla., and ending at Claremore, Okla., the rates on lumber, all kinds, have been increased 1 cent, the present rates being $17\frac{1}{2}$ cents to St. Louis and East St. Louis and $14\frac{1}{2}$ cents to Thebes. From stations Verdigris, Okla., to Sapulpa, Okla., the rate on hardwood is increased from $17\frac{1}{2}$ cents to $19\frac{1}{2}$ cents to St. Louis and from $14\frac{1}{2}$ to $16\frac{1}{2}$ to Thebes. From the same stations, which heretofore have taken the blanket rate on yellow pine, an increase of 1 cent is proposed in the yellow-pine rate. South of Sapulpa as far as Choctaw Crossing, which is just east of Oklahoma City, the rates on all kinds of lumber are on the yellow-pine blanket basis. On the Bentonville branch, and on the main line operating through Fort Smith, increases averaging 1 cent have been made. From certain stations south of Fort Smith the rates on hardwood have been increased to the blanket basis.

76 From what has been said it will be seen that north of the Arkansas River the rates are graded in small groups as the distance from the gateways increases, until the graded rates reach the yellow-pine blanket rate, which is thereafter observed as a maximum.

For the purpose of showing the actual weighted average hauls on hardwood lumber from the territory involved, and the revenue under the suspended rates, the respondents have prepared an exhibit giving the actual movement for six alternate months beginning with November, 1911, and ending with September, 1912. The exhibit is here reproduced in part:

Destination.	Number of cars.				Total.	Average haul	Average revenue
	1 line.	2 lines.	3 lines.	4 lines.		per ton.	per mile.
						<i>Miles.</i>	<i>Mills.</i>
St. Louis proper.	1,611	248	6	2	1,867	447.71	7.840
East St. Louis proper.	268	82	5	0	355	424.14	8.414
Cairo proper.	850	189	17	6	1,062	365.71	8.470
Thebes proper.	164	114	1	0	279	324.95	9.308

In order to establish the reasonableness of the rates from all the groups the respondents have compared the rate, distance, and revenue per ton-mile on traffic from each group, as shown in the above exhibit, with rates established by this Commission in other cases. For example, the exhibit shows that the 15-cent rate to St. Louis applies from a group of stations the average weighted haul from which to St. Louis is 330.14 miles and the revenue per ton-mile 9.09 mills. A table of cases is then given to show that higher rates have been approved by the Commission in other cases. A careful examination of this table, however, shows that the rates established therein applied in most instances between points where the volume of traffic is obviously less than that from this great producing territory to the gateways and an analysis of the cases referred to emphasizes the impropriety of accepting such comparisons as controlling. In the first rate relied upon by the respondents, *Gentry v. A., T. & S. F. Ry. Co.*, 13 I. C. C., 171, it appeared that a joint through rate of 28½ cents had been in effect from Ashland, Tex., to Nash, Okla., and that it had been withdrawn by the carriers because of a dispute over divisions. No other reason having been given for the withdrawal of the rate we found that it should be reestablished. The fact that that rate yielded a ton-mile revenue of 11 mills is relied upon by the respondents. That this comparison is inapt is obvious. In *Pacific Coast Lumber Mfrs. Asso. v. N. P. Ry. Co.*, 14 I. C. C., 23, from which case the respondents have taken a number of ton-mile comparisons, neither the geographic conditions nor the traffic conditions were fairly comparable with those before us in the present case. It is unnecessary to discuss the other comparisons made at great length by the respondents. It is sufficient to say that they are similar to those just detailed, and that they can not be accepted as proof of the reasonableness of the proposed rates.

We are of opinion and find that the proposed increased rates from the territory north of the Arkansas River and in Oklahoma to St. Louis, East St. Louis, Thebes, and Cairo have not been shown to be reasonable. The increases which have been made on the St. Louis & San Francisco Railroad and other roads for the purpose of aligning the hardwood rates with the present pine rates have been justified.

Proposed Increases from Kansas City Southern Points.

The Kansas City Southern Railway proposes an increase of one-half cent in the rates to St. Louis on yellow pine and 1 cent on hardwood, beginning at Siloam Springs in northwestern Arkansas and

extending as far south as Fort Smith. The rate on yellow pine now in effect from this territory to St. Louis and East St. Louis is the blanket rate of 19 cents, the proposed rate being $19\frac{1}{2}$ cents. The average distance from this group of stations to St. Louis via Kansas City is 555 miles, the 19-cent rate yielding a revenue per ton-mile of 6.84 mills. There are other routes by which the distance is somewhat less and the earnings per ton-mile consequently somewhat greater. The evidence does not show that the present rates are not sufficiently remunerative. Inasmuch as the proposed increased rate of 20 cents from the blanket as a whole to St. Louis has been held not justified and since there appears to be no reason why the rates from these Kansas City Southern points should exceed the blanket rate, we are of opinion and find that the proposed rate of $19\frac{1}{2}$ cents has not been shown to be reasonable. The proposed rates on hardwood have been justified in so far as they do not result in rates that exceed the present rates on yellow pine.

Rock Island Basing Rate to Cairo and Thebes.

From stations on the Memphis branch of the Rock Island as far west as Galloway, Ark., there is at present a basing rate to Cairo and Thebes of 11 cents, used both as a local and as a proportional rate. It is now proposed to divide this group into two parts by increasing to 12 cents the proportional rate from stations Hazen, Ark., to Galloway, inclusive. The principal reason given by this respondent for the increase mentioned is that the St. Louis, Iron Mountain & Southern Railway formerly maintained from its stations north of Little

Rock a basing rate of 11 cents to Thebes and Cairo which the
78 Rock Island was forced to meet. It is pointed out that the

St. Louis, Iron Mountain & Southern has divided its 11-cent group into three parts, the rates from which vary from 11 cents to 13 cents, and that there is accordingly no reason for maintaining the 11-cent rate from the points in question. There appears to be no reason why the rates from these stations on the Rock Island should be lower than those on the main of the Iron Mountain immediately north of Little Rock. The Rock Island has no line of its own to Cairo or Thebes, but reaches those points in connection with other lines, so that the movement in each case involves a two-line haul. The distances from the stations in question to Cairo vary from 257 miles to 298 miles, and under the proposed rate of 12 cents the revenues per ton-mile will be from 8.19 mills to 9.16 mills. This rate and these earnings compare favorably with other rates in the same general territory. We are therefore of opinion and find that the proposed rate has been shown to be reasonable.

Rock Island Rates to Memphis.

The Rock Island has also increased its rates on all kinds of lumber from certain stations on its Memphis division to Memphis. The stations affected are Cicalla, Ark., to Round Pond, Ark., inclusive, and Becks, Ark., to Brinkley, Ark., inclusive. The present rates

from these stations are 5 cents and 6 cents, and the proposed rates 1 cent higher. This branch of the Rock Island is paralleled by the Marianna branch of the Iron Mountain. The latter road having increased its rates from stations on its Marianna branch to Memphis, the Rock Island now proposes a similar increase. Exhibits filed on behalf of this respondent show that the proposed rates are substantially the same for similar distances as the rates now in effect on other lines in this region. The record shows that a large part of the line of the Rock Island to Memphis is built on a fill and that the expense of maintaining the line is unusually heavy. It further appears that the Rock Island in reaching Memphis is required to absorb out of its rate a bridge toll of 1 cent per 100 pounds. We are therefore of opinion and find that the proposed rates have been shown to be reasonable.

Proposed Increases on the Missouri & North Arkansas.

The line of this respondent traverses the state of Arkansas from the northwestern part of the state to Helena. In the eastern part of the state it is intersected by the Iron Mountain at Lexa, Ark., the Rock Island at Wheatley, Ark., the Cotton Belt at Fargo, Ark., and again by the Iron Mountain at Kensett, Ark. The local and proportional rate from Helena to Cairo is 10 cents, said to be depressed somewhat by water competition and the competition of the east side lines. In order to prevent a violation of the fourth section the 10-cent rate has been applied as far north as Wheatley. It is now proposed to increase this rate to 11 cents, which is the present basing rate on all kinds of lumber from all stations north of Weatherby, Ark., as far as Searcy, Ark. The object of this increase is said to be to permit this respondent to obtain longer hauls on traffic originating at the stations in question.

In the past it was necessary for this carrier to turn traffic over to other lines at Wheatley or Lexa in order to avoid carrying it through territory taking higher rates. Under the proposed adjustment the 11-cent rate will apply from all stations Southland, Ark., to Searcy, Ark., inclusive, so that the Missouri & North Arkansas will be able to haul traffic originating on its line as far north as Kensett without deviating from the long-and-short-haul rule of the fourth section. There appears to be no reason for requiring this carrier to continue the application of the Helena rate from these stations. We therefore find that the proposed increase has been justified.

Cancellation of Cairo Rate From Texas & Pacific Points.

Prior to our decision in Paducah Board of Trade v. I. C. R. R. Co., 29 I. C. C., 583, decided March 3, 1914, the Texas & Pacific Railway, in connection with the St. Louis, Iron Mountain & Southern and the Illinois Central, published a rate of 16 cents on yellow pine to Cairo proper from points on its line located within the yellow-pine blanket. In the case cited we held that the defendants should be required to establish from southwestern points or groups substantially equidis-

tant from Cairo and Paducah rates to the latter point no higher than the rates contemporaneously maintained from the same points of origin to Cairo. Subsequently to our decision in the Paducah case the St. Louis, Iron Mountain & Southern and the Illinois Central refused to join with the Texas & Pacific in establishing the same rates to Paducah as to Cairo. To show that this refusal was justified the respondents rely on *St. L., I. M. & S. Ry. Co. v. United States*, 217 Fed., 80, a case brought to enjoin the enforcement of our order in *Metropolis Commercial Club v. I. C. R. R. Co.*, 30 I. C. C. 40. In the latter case we had held that the maintenance of higher rates on lumber and logs to Metropolis, Ill., than to Cairo, Ill., from equidistant points in certain territory east of the Mississippi River resulted in undue prejudice and disadvantage to Metropolis. We further held that from certain territory west of the Mississippi River the rates to Metropolis should not exceed by more than 1 cent per 100 pounds the rates to Cairo. An appropriate order was entered,

80 with which all of the defendants complied except the St. Louis, Iron Mountain & Southern Railway and the St. Louis Southwestern Railway. These carriers petitioned the United States district court for the eastern district of Illinois for an injunction against the enforcement of the order. The injunction was granted on the following grounds: (1) That the evidence before the Commission was not sufficient to support the finding of discrimination; (2) that neither the St. Louis, Iron Mountain & Southern Railway nor the St. Louis Southwestern Railway had direct lines to Metropolis, and inasmuch as they did not join with any other line or lines reaching that point in making joint through rates to Metropolis the maintenance of lower rates by the lines named to Cairo than to Metropolis could not be deemed unjust discrimination or undue preference within the meaning of the act; (3) that the Commission erred in matter of law in failing to give effect to the manifest fact that the Cairo rate in and of itself was abnormally low, due to competition of other trunk lines and to competition of other points of origin.

No order was entered in the Paducah case, but the respondents call to our attention the similarity between that case and the Metropolis case, and urge that because of the similarity it would be unjust to compel any of the respondents whose lines do not reach Paducah to reduce the rates to that point to the Cairo basis. They assert that it is impossible for them to raise the Cairo rate to the Paducah basis, because the Cairo rate is made by carriers which reach that point by a one-line haul.

The opinion of the United States district court in the case referred to was based principally upon the ground that neither of the petitioners therein had direct lines to Metropolis and that neither of them joined in joint through rates to that point. We find by reference to tariffs on file with the Commission that the Texas & Pacific Railway joins with the Illinois Central in a joint through rate from points on its line to both Paducah and Cairo. It follows that the Texas & Pacific Railway must be held responsible for any unjust discrimination against Paducah or any undue preference to Cairo.

It is further urged on behalf of the southwestern respondents generally that the 16-cent rate to Cairo was made by lines which have a single line from the points of origin to that gateway, and that it would be manifestly unjust for this Commission to compel such a line as the Texas & Pacific, whose traffic can not reach Cairo by a one-line haul, to continue the publication of the 16-cent rate to that point. Exhibits filed on behalf of the respondents, however, show that most of the lumber from the yellow-pine blanket moves to Cairo by two or more lines. It is shown that for six alternate months in 1911 and 1912 the total movement of yellow-pine lumber

from the blanket to Cairo proper was 1,141 cars. Of this number only 81 cars moved over a single line, 851 over two lines, 205 over three lines, and 4 cars over four lines. Of 7,977 cars moving from the yellow-pine blanket, as a whole, to St. Louis, East St. Louis, Cairo, and Thebes, more than one-half moved over two lines. The conclusion is inevitable, therefore, that the argument of the Texas & Pacific that it does not reach Cairo with its own line can not be accepted as conclusive evidence of the unreasonableness of the 16-cent rate.

Our attention is further called to the fact that the opinion of the federal court in the case cited was based also on the fact that the Commission erred in matter of law in failing to give effect to the fact that the Cairo rate was abnormally low because of competitive influences, and the respondents allege that the analogy between the situation at Paducah and that at Metropolis is sufficient to warrant a further conclusion that the Commission erred in matter of law in requiring an equalization in the rates to Cairo and Paducah. We do not understand that this is a necessary deduction from the facts, and nothing appears of record which would warrant us in reversing our conclusion in the Paducah case. We are therefore of opinion and find that the Texas & Pacific Railway has not justified the cancellation of its rate to Cairo.

It is further urged on behalf of the Rock Island, the Vicksburg, Shreveport & Pacific, and Morgan's Louisiana & Texas Railroad that considerations similar to those above set forth make it inequitable to require those lines to comply with our decision in the Paducah case, though the rates in the suspended tariffs are in compliance therewith. It is alleged that Paducah is not fairly comparable with Cairo, and that the Commission should recognize the natural advantages of Cairo. This evidence was before us when the Paducah case was decided, and nothing appears in the present record which convinces us that our conclusion should be changed.

Increases in Rock Island Rates to Louisville and Cincinnati.

In *Davis Bros. Lumber Co. v. C., R. I. & P. Ry. Co.*, 26 I. C. C., 257, producers of yellow-pine lumber at Ansley, Bernice, Dubach, and Wyatt, La., alleged that the rates on yellow-pine lumber from those points to Louisville, Ky., and Cincinnati, Ohio, were unreasonable and unjustly discriminatory as compared with the rates from competitive points on other lines in northern Louisiana. The rates

assailed were 25 cents per 100 pounds to Louisville and 27 cents to Cincinnati. We held that the rates were unreasonable to the extent that they exceeded 21 cents to Louisville and 23 cents to Cincinnati. In complying with our order in that case the Rock Island made similar reductions in the rates, not only from intermediate stations, but from branch-line stations and from points west of Little Rock. In the suspended tariffs it is proposed to increase these rates because of "the operating conditions under which the traffic is transported and the financial condition of the company."

From stations Walker Spur, La., to Eunice, La., it is proposed to increase the Louisville rate from 21 cents to 22½ cents and the Cincinnati rate from 23 cents to 25 cents. From stations Fitch, Ark., to Apex, Ark., the Louisville rate is increased from 21 cents to 21½ cents and the Cincinnati rate from 23 cents to 24 cents. The same increases are proposed in the rates from stations Milams, La., to Meridian, La. It is not proposed to increase the rates from the four points involved in the Davis Bros. case.

In support of the proposed rates this respondent, like the others, relies chiefly on comparisons of ton-mile revenues. It is shown, for example, that from the group of stations west of Little Rock the average distance to Louisville is 580 miles and the average revenue per ton-mile 7.4 mills. To Cincinnati the average distance is given as 695 miles and the revenue 6.9 mills. From the stations south of Meridian the average distances to Louisville and Cincinnati are 846 miles and 960 miles, respectively, and the earnings per ton-mile 5.3 mills and 5.2 mills. From stations Milams to Meridian the earnings are 5.4 mills and 5.3 mills. Cases are cited in which we have established rates yielding higher revenues per ton-mile for similar distances. There is no proof, however, that the conditions in the cases cited were similar to those in the present case, and the comparisons are therefore open to the objection that they assume that distance was the controlling consideration in all the cases. Such an assumption is not warranted. The record does not show that the operating conditions on this line are more difficult now than they were when the rates were reduced, nor is it established that the present rates are not remunerative. We therefore find that the reasonableness of the suspended rates has not been established.

The Protest of the Chicago & Eastern Illinois Railroad.

Prior to the publication of the tariffs suspended in the present proceeding the southwestern lines generally published a rate of 16 cents on yellow-pine lumber from the blanket territory to Thebes and Cairo. This rate applied not only as a local rate to those gateways, but as a proportional on traffic for beyond. Through rates to the consuming territory east of the Mississippi River and north of the Ohio River were commonly made on the basis of combinations on Thebes or Cairo, and the use of rates so made was not restricted to any specific route. In the tariffs suspended in this case most of the lines, while increasing the rates to Thebes and Cairo proper from

16 cents to 17 cents, have left the proportional rate of 16
83 cents in effect, so that there has been no increase proposed from stations on most of the lines to points in central freight association territory and trunk line territory. The St. Louis Southwestern Railway and the St. Louis, Iron Mountain & Southern Railway, however, while they propose to increase the local rate to Thebes and Cairo from 16 cents to 17 cents, have not published in the suspended tariffs proportional rates to apply on traffic moving through these gateways, so that on through traffic moving through Thebes and Cairo from points on these two lines there will be an increase of 1 cent in the through rates. The tariffs of the St. Louis, Iron Mountain & Southern, and the St. Louis Southwestern provide, however, that lumber originating on their lines may be routed via East St. Louis on the basis of joint through rates no higher than the rates now in effect. The result of this is that the through rates to points of consumption in central freight association territory and trunk line territory via the East St. Louis route will be the same as the present rates, but traffic moving via Thebes in connection with the Chicago & Eastern Illinois will be required to pay the 17-cent rate up to that gateway plus the rates beyond, making the rates by this route 1 cent higher than by the East St. Louis route.

The Chicago & Eastern Illinois Railroad connects with the St. Louis, Iron Mountain & Southern and the St. Louis Southwestern at Thebes, at which point it has built at great expense facilities for receiving lumber from the southwest. The Chicago & Eastern Illinois Railroad directs our attention to the fact that the practical effect of this adjustment will be to close the route in which its line participates. The St. Louis, Iron Mountain & Southern Railway and the St. Louis Southwestern Railway admit that the proposed increase will have that effect, but they rely upon that provision of section 15 of the act which places a limitation upon the Commission's authority to establish through routes. They further call attention to the fact that no question of through routes is involved in this case and that the only question in issue is the reasonable or unreasonable-ness of the proposed increase of 1 cent in the local rate to Thebes and Cairo. This contention is obviously correct, and inasmuch as we have already decided that the proposed increased rate to these gateways has not been shown to be reasonable it follows that the present 16-cent rate must continue to apply as a proportional rate by all routes. It is unnecessary, therefore, to give further consideration to the protest of the Chicago & Eastern Illinois Railroad.

Proposed Increases in Southbound Rates.

It is also proposed to make increases averaging 2 cents in the rates on all kinds of lumber to New Orleans from a number of
84 groups of stations in the southwestern territory. From all stations on the St. Louis Southwestern Railway north of Fargo, Ark., the rate has been increased from 17 cents to 19 cents. The same increase has been made from points on other lines in the group which embraces southeastern Missouri and the extreme north-

ern part of Arkansas. The rates from other groups less distant from New Orleans have also been increased by 2 cents. The following table, taken from the brief of one of the protestants, shows the distances to New Orleans from representative points in Missouri and Arkansas and the earnings under the present and the proposed rates:

	Miles.	Rate.	Revenue per ton- mile.	Proposed rate.	Revenue per ton- mile.	Carrier.
		<i>Cents.</i>	<i>Mills.</i>	<i>Cents.</i>	<i>Mills.</i>	
Poplar Bluff, Mo.....	{ 665	17	5.1	19	5.7	(¹)
	{ 546	17	6.2	19	7.0	(²)
Sikeston, Mo.....	{ 711	17	4.8	19	5.3	(¹)
	{ 534	17	6.3	19	7.0	(²)
Nettleton, Ark.....	{ 629	17	5.4	19	6.0	(¹)
	{ 455	17	7.4	19	8.3	(²)
Newport, Ark.....	568	15	5.3	17	6.0	(¹)
Earle, Ark.....	534	15	5.6	(³)	.....	(¹)
Dermott, Ark.....	377	15	8.0	(³)	.....	(¹)
Little Rock, Ark.....	486	15	6.2	17	7.0	(¹)
Average.....			6.03	.....	6.53	

¹ St. Louis, Iron Mountain & Southern.

² St. Louis & San Francisco.

³ No change.

Comparatively little evidence had been submitted by the respondents in support of the proposed increases. They assert that nearly all of the rates in question were originally made low because of water competition, that the southbound movement of lumber is relatively small, and that the operating conditions west of the river are difficult. The movement of hardwood lumber to New Orleans from this territory is smaller than the movement to Cairo or St. Louis, and the earnings per ton-mile under the proposed rates carry from 5.3 mills to 8.84 mills. Tables are submitted comparing these earnings with the revenues yielded by higher rates prescribed by the Commission for similar distances in other cases, but there is no proof that the situations are similar.

The protestants show that in Lumber Rates from Memphis to New Orleans, 27, I. C. C., 471, the Commission approved a rate of 12 cents on lumber from Memphis to New Orleans, a distance of about 400 miles, and they contend that the present rate of 17 cents from southeastern Missouri and northern Arkansas, affording a differential of 5 cents over the Memphis rate, is sufficiently high. They further show that the rate to New Orleans from Cairo, which is directly east of Poplar Bluff, is 15 cents, and that the rate on staves from St.

Louis to New Orleans for export to certain foreign countries is 16.3 cents. Our attention is also called to the fact that in attempting to justify the proposed increased rates northbound the respondents dwelt upon the extraordinarily heavy movement of empty cars southbound. Their evidence in that respect lessens the force of their contention that the southbound rates should be higher because of the light traffic.

In Wisconsin & Arkansas Lumber Co. v. St. L., I. M. & S. Ry.

Co., 33 I. C. C., 33, complainants whose mills are located in the northern part of the yellow-pine blanket called our attention to the fact that when they shipped to the upper Mississippi crossings they paid a rate as high as that paid by shippers located in southern Louisiana. In that connection we said:

If blanket rates properly apply northward by rail to the gateways, blanket rates, it would seem, should properly apply southward to the Gulf ports. Instead of this the southern mills are accorded mileage rates to the Gulf for export. The record here is not sufficient for us to prescribe export rates to which Arkansas points are entitled, but we are of the opinion that such rates may rightfully be required by complainant.

The fact that the rates proposed in the suspended tariffs would increase by 2 cents the rates on all kinds of lumber from the northern part of the blanket, thereby placing the shippers there located at a further disadvantage, is an added reason for not permitting the proposed rates to take effect.

We are of opinion and find that the evidence of record does not establish the reasonableness of the proposed increases in the south-bound rates.

Situations East and West of the Mississippi Compared.

In the Chicago Lumber & Coal case we found that transportation conditions west of the Mississippi River were substantially dissimilar from those east of the river, and we therefore permitted an increase of 2 cents in the rates from a large territory west of the river. The effect of that decision was to make the rate on yellow-pine lumber from the southwestern blanket to Cairo 2 cents higher than the rate from the principal pine-producing sections east of the river. Considerable evidence has been introduced in the present proceeding for the purpose of showing that the dissimilarity between the two territories is less marked than it was a few years ago. The respondents in the southeast and both shippers and respondents in the southwest unite in saying that the differential of 2 cents in favor of the producers whose mills are located east of the river is no longer justifiable.

86 An elaborate exhibit has been prepared on behalf of one of the protestants, whose mills are located in the southwest, which purports to show that the average distance to Cairo from 18 representative centers of production in the southwest is 484 miles, while from 22 similar points in Mississippi Valley territory and southeastern territory the average distance to Cairo is 505 miles. While this exhibit has not escaped criticism, it seems fairly to show that, if distance alone were controlling, the rates to Cairo from both sides of the river should be on a parity.

On page 47 of our report in the Wisconsin & Arkansas Co. case, 33 I. C. C., 33, we inserted a table containing certain operating statistics for representative lumber-carrying lines both east and west of the river. More elaborate exhibits filed in the present proceeding show that the net operating revenues per mile of road of typical carriers

in the southwest compare favorably with the net operating revenues per mile of road of the lines east of the Mississippi.

The question as to the effect of our decisions in the Tap Line cases on the revenues of the southwestern lines has played a prominent part in this proceeding, but the evidence is of a rather indefinite character. Our decision in the Central Yellow Pine case, in which certain increases in the rates east of the Mississippi River were denied, was based in part on the fact that the roads west of the river made tap-line allowances to proprietary mills, while similar allowances were not made by the lines east of the river, with the exception of the Mobile & Ohio. We observed in the case cited that—

if the rate west of the river is reasonable minus the allowances, this is persuasive or gives color to the proposition that after a similar reduction the rates east of the river would still be reasonably high.

It is now asserted that as a result of the Tap Line cases the allowances so paid by the southwestern lines have been considerably reduced. The respondents were unable or unwilling to furnish exact information as to the extent to which tap-line allowances have been reduced, and the protestants were able only to cite a few instances in which the allowances now received by tap lines are less than they formerly were. In spite of the unsatisfactory nature of the evidence it may be said with confidence that the revenues of the southwestern lines are less impaired by tap-line allowances than they were when the Central Yellow Pine case was decided, and at least to that extent there is less dissimilarity in the conditions east and west of the river than there was a few years ago.

Proposed Increases from Territory East of Mississippi River.

Generally speaking, the respondents propose to increase by 1 cent the rates on lumber from Mississippi, Alabama, Georgia, Florida, and Tennessee to Memphis, St. Louis, Cairo, and the Ohio River crossings east of Cairo. Cottonwood and gum lumber con-

87 stitute the most important exception to this general statement. The rates on cottonwood and gum have been materially lower than the rates on other kinds of lumber, and the respondents propose to raise them to the hardwood basis. The result is that the increases in the rates on cottonwood and gum in many cases are much greater than 1 cent.

As already noted, the respondents east of the Mississippi River have not increased any of the through rates to points beyond the Ohio River, though it is their intention to do so if the increases proposed in this case are allowed. From the southeastern territory there are proportional rates to the gateways, as well as local rates, and the same increases have been made in both.

The principal difference between the position taken by the southwestern lines, whose reasons for advancing their rates we have already considered, and that taken by the lines east of the river, is that the latter maintain that the proposed increases have been occasioned by the Commission's decisions in a line of cases known as

the Ohio River cases. They are careful to state that the fundamental cause of the increases is the fact that the rates are unduly low, but a large proportion of their evidence is directed to their contention that the proposed increases are the logical, if not inevitable, result of our decisions in these cases.

In the cases referred to it appeared that the rates on lumber to and from the Ohio River crossings were so constructed as to give a point located on one side of the river an undue preference over a competing point directly opposite. For example, in *Norman Lumber Co. v. L. & N. R. R. Co.*, 22 I. C. C., 239, it appeared that a bridge toll of 1 cent per 100 pounds was added to the rate from the north bank of the Ohio River to make the rate from Louisville, while Cairo, Cincinnati, and Evansville paid no bridge toll either on inbound or outbound shipments, so that on lumber handled at Louisville and reshipped to points in central freight association territory and trunk line territory dealers in lumber at Louisville paid a through rate 1 cent higher than dealers located at north bank points, especially Cincinnati. We said:

There can be no doubt that Louisville, on the south bank of the river, ought not to pay inbound a rate which is sufficient to cover the transportation of traffic to the north bank of the river, and then, when reshipping the traffic to the north, again pay an amount sufficient to cover the transportation across the bridge. In other words, Louisville ought not to be considered on the north bank of the river on inbound shipments and on the south bank of the river on outbound shipments.

In *Norman Lumber Co. v. L. & N. R. R. Co.*, 29 I. C. C., 565, we said:

In view of all these considerations we do not believe that, in so far as competition with Cincinnati is concerned, the maintenance of rates from Louisville to central freight association territory which reflect the bridge toll for crossing the Ohio River and which in consequence thereof are 1 cent higher than rates from Cincinnati to equidistant points constitutes an undue discrimination against Louisville.

We then added:

In view of all these facts and circumstances, it is our opinion that the rates on lumber from equidistant southeastern territory to Louisville should be 1 cent less than those contemporaneously maintained to Cincinnati, New Albany, or other north bank Ohio River crossings.

A number of other cases are cited by the respondents in which we have held that the transportation of lumber across the expensive Ohio River bridges is an additional service which warrants a spread of 1 cent per 100 pounds in the rates to and from opposite crossings. *Manufacturers & Merchants' Asso. of New Albany v. A. & A. R. R. Co.*, 24 I. C. C., 331; *Investigation & Suspension Docket No. 115*, 24 I. C. C., 686; *Paducah Board of Trade v. I. C. R. R. Co.*, 29 I. C. C., 583; *Same v. Same*, 29 I. C. C., 593; *Metropolis Commercial Club v. I. C. R. R. Co.*, 30 I. C. C., 40.

Relying upon these cases, the respondents say that—

It is impossible to escape the conclusion, in considering this series

of Ohio River bridge toll cases, that the Commission intended that inbound rates from Southern producing territory to south bank points at all crossings should be made uniformly 1 cent less than to opposite north bank points—

and they have accomplished this result mainly by increasing by 1 cent the rates to the north bank points. Not only has the uniform spread of 1 cent been made between points on opposite sides of the Ohio River, but the proposed rates establish the relationship between Louisville and Cincinnati prescribed in the second Norman Lumber Co. case. The carriers frankly admit that the adjustment could have been made by reductions or by part increases and part reductions. Their reasons for accomplishing the desired results by increases are as follows: (1) An order to cease from unjust discrimination operates in the alternative; (2) in the Ohio River cases the reasonableness of the rates to the crossings was not challenged; (3) the rates to the crossings are unusually low, having been made to meet the competition of less distant producing areas; (4) the rates to the south bank points apply in many cases to a large intermediate territory, so that a reduction in these rates would mean a corresponding reduction to all the intermediate points. It is shown, for example, that a reduction in the rates to Louisville would reduce the rates to many intermediate points on the Illinois Central between Louisville and Paducah, and also to points on the Louisville & Nashville south of Louisville. The record shows that the movement of lumber to this intermediate territory is by no means negligible, and the respondents earnestly insist that it would be unjust to require them

89 to create the spread of 1 cent between north bank and south bank points by making reductions which would seriously shrink their revenues.

Cost of Operating Over the Ohio River Bridges.

Considerable evidence has been submitted, though in fragmentary fashion, for the purpose of showing that the cost of operating over the Ohio River bridges is so great as to warrant an additional charge of 1 cent per 100 pounds, which in the transportation of lumber is approximately equivalent to \$5 per car.

The evidence of record confirms our previous finding that if the Ohio River crossings are not to be placed on a parity by absorbing the bridge tolls at all crossings, the equalization should be effected by making a uniform charge of 1 cent per 100 pounds for the bridge service in all cases. The respondents direct our attention to the fact that the northern lines have made the rates on lumber from south bank points to destinations north of the Ohio River 1 cent higher than the rates from the opposite north bank points, so that it is no longer possible for the southern lines to equalize all the crossings by uniform absorptions.

We have frequently said that it is the carrier's duty under the statute to establish the reasonableness of the increased rate rather than the reasonableness of the increase. It is admitted, however,

that the Ohio River bridges constitute an important item in respondents' transportation costs, and considerable evidence has been introduced for the purpose of showing that it costs at least 1 cent per 100 pounds to haul a carload of lumber across these bridges.

In the second Norman Lumber Co. case we set out the actual bridge tolls on lumber at the Ohio River crossings, on local and through business, as follows:

From—	Local.	Through.
Louisville, Ky., to New Albany, Ind.....	2	1
Louisville, Ky., to Jeffersonville, Ind.....	2	1
East Cairo, Ky., to Cairo, Ill.....	3	2
Covington, Ky., to Cincinnati, Ohio (C. & O. Ry.).....	3	(¹)
Newport, Ky., to Cincinnati, Ohio (C. & O. Ry.).....	3	(¹)
Paducah, Ky., to Brookport, Ill. (I. C. R. R. via ferry).....	3	2
Henderson, Ky., to Evansville, Ind.....	3	1
Covington, Ky., to Cincinnati, Ohio (L. & N. R. R.).....	3	1
Newport, Ky., to Cincinnati, Ohio (L. & N. R. R.).....	3	1

¹ Switching rate, 25 cents per 2,000 pounds; maximum, \$8 per car; minimum, \$5.

The evidence shows that the total cost of the bridge at Cairo as of January 30, 1915, was \$3,731,852.47. The total length of the bridge proper is 4,137 feet, and including the approaches its total length is 3.87 miles. The Kentucky-Indiana Terminal bridge between Louisville and New Albany cost up to June 30, 1914, \$2,242,412.

90 34, and this amount is said not to include the cost of tracks and terminal facilities used in transporting traffic between Louisville and New Albany.

Information submitted by the Louisville Bridge Company shows that the original cost of its bridge and tracks was \$2,059,397. The cost of the Cincinnati Southern bridge is approximately \$2,000,000. In the case of the Cairo bridge it is alleged that the approaches have been seriously damaged by disastrous floods since 1906, and at a great expense the approaches have recently been raised 60 feet.

Evidence has also been introduced as to the annual cost of maintaining some of the bridges. The total cost, including interest and taxes, for the fiscal year 1914, of the bridge between Louisville and New Albany, owned and operated by the Kentucky & Indiana Terminal Railroad Company, was \$812,903.02. During the same year it cost \$499,277.14 to operate the bridge owned by the Louisville & Jeffersonville Bridge Company. None of the southern lines own any interest in this bridge, and on traffic destined to Jeffersonville they are obliged to pay to the bridge company the transfer charge of 2.1 cents, making necessary an absorption of 1.1 cents per 100 pounds if the spread between north bank and south bank points is only 1 cent. It is also shown that the Illinois Central Railroad and the Louisville & Nashville Railroad are required to pay 2.1 cents per 100 pounds to the Kentucky & Indiana Terminal Railroad Company on all lumber consigned to New Albany from the south.

There are obvious difficulties which preclude an accurate determination of the cost of hauling one car of lumber across these bridges. In some cases the bridges are owned by companies which operate in connection therewith many miles of tracks and terminals, and the

operating expenses are not separated as between the bridge proper and the other property of the company. In other cases the bridges are used by passenger trains and trolley cars, and it is difficult, if not impossible, to allocate the expenses. In still other cases it is necessary, in hauling traffic from a city on one side of the river to a city across the river, to haul the traffic over several miles of tracks in addition to the bridge haul proper. Furthermore, some of the companies do not distinguish between loaded and empty cars in making their reports as to the number of cars crossing the bridges in a year.

As previously suggested, the matter principally in issue in this case is not the actual cost of transporting traffic across the Ohio River bridges, but rather the reasonableness of the proposed increased rates. If the proposed rates are reasonable, they must be permitted to take effect whether the bridge tolls are unreasonable or not. On the other hand, if the proposed rates are not reasonable they must be condemned, regardless of the reasonableness of the bridge tolls.

91 We must, however, in considering the reasonableness of the proposed rates, recognize the fact that the Ohio River bridges involved large expenditures of capital, that they are expensive to maintain, and that the rates on lumber from southern points to central freight association territory and trunk line territory may well be somewhat higher than they would be if it were not necessary to cross the Ohio River. The evidence in the present record does not show that an allowance of less than 1 cent per 100 pounds for the bridge toll would be reasonable.

Proposed Increases from Mississippi Valley Territory.

The lines extending to Cairo and East St. Louis from the Mississippi Valley territory are the Illinois Central and the Mobile & Ohio. Both yellow pine and hardwoods, including cottonwood and gum, are found in great quantities along the lines of these carriers and their connections. Little pine lumber is produced in the Mississippi Valley north of the line of the Alabama & Vicksburg Railway, the principal pine-producing area being in the extreme southern part of the valley, especially the territory served by the Illinois Central and its connections. North of the line of the Alabama & Vicksburg Railway, and particularly along the Yazoo & Mississippi Valley Railroad, hardwood is found in abundance. The heavier production of hardwood is in the so-called delta section, bounded by Memphis on the north and by Vicksburg and Jackson, Miss., on the south. Cottonwood lumber grows along the rivers and is shipped principally from Memphis, Helena, Greenville, Miss., and Vicksburg. The principal production of gum lumber is also found in the delta section. In Mississippi pine lumber constitutes 82 per cent of the total production.

The proposed increases from Mississippi Valley territory apply not only on pine lumber but on hardwood, including cottonwood and gum.

From the great pine-producing section in southern Mississippi and Louisiana, known as group 1, the proposed increases from points on

the Illinois Central and Yazoo & Mississippi Valley are as follows: One cent to St. Louis, Cairo, and Cincinnati; one-half cent to Henderson, Evansville, Owensboro, and Louisville. A reduction of 2 cents is made in the rates to Paducah, and the rates to Brookport and Metropolis are reduced 1 cent. A reduction of one-half cent is made in the rates to New Albany and Jeffersonville, and the rates to East Cairo have not been changed. Similar changes also apply from points on connecting roads, such as the Gulf & Ship Island, New Orleans Great Northern, and the New Orleans, Mobile & Chicago.

92 The rates from Memphis on all kinds of lumber other than cotton-wood and gum have been increased as follows: One cent to Cairo, Brookport, Metropolis, and Cincinnati; one-half cent to St. Louis, Henderson, Owensboro, New Albany, and Louisville; $1\frac{1}{2}$ cents to Evansville. The rates to East Cairo and Paducah have not been changed, but the rates to Jeffersonville have been reduced one-half cent.

From group 9, which is the delta section and is served by the Illinois Central and the Yazoo & Mississippi Valley railroads, the proposed increases are as follows: One-half cent to St. Louis, Henderson, Owensboro, and Louisville; 1 cent to Cairo, Brookport, Metropolis, and Cincinnati; $1\frac{1}{2}$ cents to Evansville and New Albany. A reduction of one-half cent has been made in the rate to Jeffersonville. From group 7, which is also in the delta section south of group 9 and which produces only hardwoods, the proposed increases are as follows: One-half cent to St. Louis and Jeffersonville; 1 cent to Cairo, Brookport, Metropolis, and Cincinnati; $1\frac{1}{2}$ cents to Henderson, Owensboro, and Louisville; $2\frac{1}{2}$ cents to Evansville and New Albany.

The proposed adjustment in the rates from the principal pine-producing section served by the Mobile & Ohio Railroad is similar to that already described on the Illinois Central. The principal producing section served by the Mobile & Ohio is in southeastern Mississippi and in southern Louisiana. From all stations south of Artesia, Miss., the proposed increases are as follows: One-half cent to Louisville, Evansville, Henderson, and Owensboro, and 1 cent to Cincinnati, Cairo, and St. Louis. A reduction of one-half cent is made to New Albany and Jeffersonville, 2 cents to Paducah, 4.2 cents to Brookport, and 1 cent to Metropolis.

The respondents direct our attention to the fact that the proposed increases will bring about in every case the adjustment required by the Commission in the various Ohio River cases. For example, the rates to Paducah are uniformly 1 cent less than to Cairo, the rates to Metropolis are the same as to Cairo, and the rates to Cincinnati and Louisville establish the differentials required in the second Norman Lumber Co. case.

For the purpose of establishing the reasonableness of the proposed rates from Mississippi Valley territory the respondents rely in some measure upon the history of the rates in question. Their principal contention in this respect is that the rate from the territory east of the Mississippi to Cairo has been for several years 2 cents lower than

the rate from the west side, while to St. Louis the east side rates have been 1 cent lower.

Emphasis is also laid on the fact that while the tonnage handled by the Mississippi Valley lines is considerably greater than it was 10 years ago a comparatively small percentage of the traffic originates on the main lines. As the producers located on the main lines cut away their holdings they dismantled their mills and moved to other territory, principally on connecting lines, with the result that a large proportion of the tonnage now handled by the trunk lines originates on connecting lines, with which the rates now must be divided. Of the 4,811,532 tons of lumber handled by the Illinois Central in 1913 it originated only 2,220,268 tons. For the same year the Mobile & Ohio originated only 824,661 tons of the 2,367,852 tons of forest products handled by it. We are further told that the country through which the Yazoo & Mississippi Valley Railroad operates is low and swampy, and as much subject to floods as the territory west of the river.

The direct line to Cairo and St. Louis from the pine-producing territory in the southern part of the Mississippi Valley is the Illinois Central. The shortest distance for which the present 14-cent rate to Cairo, which it is proposed to increase to 15 cents, applies is 320 miles, from Goodman, Miss. The maximum distance is 554 miles, from New Orleans. The center of production is at Kentwood, La., which is 470 miles from Cairo. On the Yazoo & Mississippi Valley Railroad the center of production is said to be at Garyville, La., 583 miles from Cairo. From Kentwood and Garyville the revenues per ton-mile under the proposed rate of 15 cents to Cairo would be 6.4 mills and 5.15 mills, respectively.

Elaborate exhibits have been filed by the respondents comparing the suspended rates from the Mississippi Valley territory with other rates, especially with rates from equidistant points west of the river. These exhibits will not be discussed in detail in this report. It suffices to say that they show that the proposed rates compare favorably with rates for similar distances from other territories.

No evidence has been submitted by the respondents to show that the lumber traffic is not relatively remunerative. They have prepared exhibits, however, showing the financial condition of the Mississippi Valley lines. The statistics filed on behalf of the Illinois Central Railroad show that the property investment account of that carrier increased from \$180,557,000 in 1900 to \$277,451,000 in 1914. During the same period the operating ratio increased from 65.31 per cent to 77.28 per cent, while the ratio of net operating income to property investment decreased from 5.32 per cent in 1900 to 4.58 per cent in 1914. The operating ratio of the Mobile & Ohio Railroad increased from 69.60 in 1903 to 81.05 in 1914. During the same period the operating income per mile of road fell from \$2,604 in 1903 to \$2,195 in 1914.

The evidence of record would not warrant a finding that the spread which we have said should exist between north bank and south bank points should be accomplished by uniform reductions in the rates to the south bank points. At a number of the

crossings, however, the rate to the north bank point is already 1 cent higher than the rate to the south bank point. We therefore find that the proposed increased rates to the north bank points from the pine-producing section of the Mississippi Valley, located on and west of the line of the Mobile & Ohio Railroad and east of the Mississippi River, are reasonable to the extent that they do not exceed the present rates to the south bank points by more than 1 cent per 100 pounds. In those cases where a spread of 1 cent or more already exists between opposite points no increases will be permitted. The proposed rates to St. Louis are shown to be reasonable to the extent that they do not exceed by more than 1 cent the rates now in effect. We further find that no increases should be made in the rates to the south bank points.

Rates on Hardwood Other Than Cottonwood and Gum.

As noted above, the principal production of hardwoods in the Mississippi Valley territory is in the so-called delta section south of Memphis, known as groups 7 and 9. The proposed increases from these groups to the various crossings are shown in the following table:

	St. Louis.		Cairo.		East Cairo.		Evans- ville.		New Albany.		Louis- ville.		Cincin- nati.	
	Present.	Proposed.	Present.	Proposed.	Present.	Proposed.	Present.	Proposed.	Present.	Proposed.	Present.	Proposed.	Present.	Proposed.
From group 7:	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.
Pine	15	15½	13	14	13	13	15	17½	15	17½	15	16½	18	19
Cottonwood and gum...	13	15½	10	14	10	13	13	17½	15	17½	13	16½	16	19
Other kinds	15	15½	13	14	13	13	15	17½	15	17½	15	16½	18	19
From group 9:														
Pine	15	15½	13	14	13	13	15	16½	15	16½	15	15½	18	19
Cottonwood and gum...	13	15½	10	14	10	13	13	16½	15	16½	13	15½	16	19
Other kinds	15	15½	13	14	13	13	15	16½	15	16½	15	15½	18	19

An exhibit filed by respondents shows that the average distance to all the crossings from Charleston, Miss., a representative producing point, is 452 miles, the average rate 15.5 cents per 100 pounds, and the average revenue per ton-mile 6.9 mills.

Two cases recently decided by the Commission are relied upon by the parties in the present case as having an important bearing 95 on the situation before us. One of them, *Southern Hardwood Traffic Bureau v. I. C. R. R. Co.*, 31 I. C. C., 6, is relied upon by the respondents as proving beyond question the reasonableness of the proposed increased rates. The other, *Bellgrade Lumber Co. v. I. C. R. R. Co.*, 32 I. C. C., 403, is said by the protestants to prove the proposed rates to be excessive. In the former case we approved the rates on lumber from Batesville, Miss., to points be-

yond the Ohio River, and the respondents show at some length that the proposed rates in the present case are not higher than those approved in that case. An examination of the case referred to shows that the principal question in issue in that case was the relationship of rates between Sardis, Miss., and Batesville. Only in the last sentence of the report did we refer to the reasonableness per se of the rates, and then only for the purpose of indicating that the evidence of record did not prove the rates to be unreasonable. In the Bell-grade case we held that the rate of 12 cents on all kinds of lumber from Memphis to New Orleans was not shown to be unreasonable. The protestants show that the rates proposed are slightly higher than the rates approved for similar distances in the case cited.

The respondents have also submitted exhibits comparing the proposed rates with rates for similar distances in central freight association territory, from which it appears that the former are only slightly higher, and in some cases no higher, than the latter. It is further shown that because the hardwoods grow principally along the waterways the rates on hardwoods have been depressed by water competition to a greater extent than the rates on pine. It would therefore be unjust to require the respondents to effect the required adjustment at the Ohio River crossings by uniform reductions. Nor does the evidence of record show that the rates on hardwood, other than cottonwood and gum, should be less than the rates on pine. We are therefore of opinion and find that the proposed increased rates on hardwoods, other than cottonwood and gum, to the north bank Ohio River points and to St. Louis and East St. Louis from points east of the Mississippi River and on and west of the Mobile & Ohio Railroad are shown to be reasonable to the extent that they do not exceed by more than 1 cent per 100 pounds the rates now in effect. In those instances where the rates on hardwoods, other than cottonwood and gum, are lower than the rates on yellow pine, increases greater than 1 cent will be permitted, provided that the rates shall in no case exceed the rates contemporaneously in effect from the same points on pine lumber.

96 Increases From Points on the Southern Railway in Mississippi.

The principal lumber-producing territory served by this respondent is in western Mississippi, west of Greenwood, Miss., a territory which is also reached by the Illinois Central Railroad and the Yazoo & Mississippi Valley Railroad. The yellow pine originating on the line of this carrier is said to be almost negligible. About 75 per cent of the lumber moving from points west of Greenwood consists of cottonwood and gum. It is stated on behalf of this respondent that the rates from the lumber territory served by it are primarily made, and to a large extent controlled, by the Illinois Central Railroad and the Yazoo & Mississippi Valley Railroad, the distances to Memphis and the Ohio River crossings from the lumber territory in western Mississippi being considerably greater via the Southern Railway than the distances over the more direct lines.

Exhibits filed by witnesses for the Southern Railway in Missis-

issippi, giving in detail the present and proposed rates to the crossings, show that the increases proposed are similar to those proposed by competing lines. The present rates to north bank points are generally the same as the rates to the opposite south bank points. It is proposed to increase by 1 cent the rate to Cairo, and the increases to the other north bank points vary from one-half cent to 2½ cents. The rates on cottonwood and gum from the principal producing section to Cairo are increased from 10 cents to 14 cents, the increases to the other crossings being somewhat less.

The evidence submitted by this respondent consists to a large extent of testimony and exhibits as to its financial condition. This company has never paid a dividend. The ratios of its total expenses and taxes to operating revenue for the fiscal years 1912, 1913, and 1914 were 90.65, 102.43, and 88.52, respectively, the figures for 1913 showing a net loss of \$85,026.49. Since November 1, 1906, this company has been operated by the Mobile & Ohio Railroad.

We are of opinion and find that the proposed rates on lumber, other than cottonwood and gum, from points on the Southern Railway in Mississippi to St. Louis are shown to be reasonable to the extent that they do not exceed by more than 1 cent the rates now in effect, and that the proposed rates to the north bank Ohio River crossings are shown to be reasonable to the extent that they do not exceed by more than 1 cent the present rates to the opposite south bank points. No increases to south bank points or to Memphis will be allowed, except that the rates on cottonwood and gum lumber may be increased to the same basis as the rates on other hardwoods, as hereinafter indicated.

The Rates From Memphis, Tenn.

The present and proposed rates, in cents per 100 pounds, from Memphis to the Ohio River crossings and St. Louis are shown in the following table:

From Memphis, Tenn., to—	Pine lumber.		Cottonwood and gum.		Other kinds of lumber.	
	Present.	Proposed.	Present.	Proposed.	Present.	Proposed.
St. Louis, Mo., East St.						
Louis, Ill.	12	12½	10	12½	12	12½
Cairo, Ill.	10	11	10	11	10	11
East Cairo, Ky. ....	.....	10	.....	10	.....	10
Brookport, Ill., Metro-						
polis, Ill.	10	11	10	11	10	11
Paducah, Ky.	10	10	10	10	10	10
Evansville, Ind.	11	12½	10	12½	11	12½
Henderson, Ky.	11	11½	10	11½	11	11½
Owensboro, Ky.	12	12½	10	12½	12	12½
New Albany, Ind.	13	13½	11	13½	13	13½
Jeffersonville, Ind.	14	13½	12	13½	14	13½
Louisville, Ky.	12	12½	10	12½	12	12½
Cincinnati, Ohio	15	16	13	16	15	16
Covington, Ky., New-						
port, Ky.	15	15	13	15	15	15

An exhibit filed by the respondents compares the proposed rates from Memphis with the proposed rates from Nashville, Chattanooga, and Knoxville to the same crossings. Respondents say that this exhibit "demonstrates that under this revision Memphis still has a very favorable adjustment." It is true that the proposed rates from Nashville, Chattanooga, and Knoxville yield earnings per ton-mile which are approximately the same as those which would result from the proposed rates from Memphis, but this comparison can not be regarded as controlling. No increases will be permitted, therefore, in those cases where the rates to opposite crossings already reflect the bridge toll. Increases not exceeding 1 cent per 100 pounds may be made in the rates to north bank points where the rates to such points are not already higher by 1 cent than the rates to the opposite points. The proposed increases to St. Louis have been justified.

Rates From Memphis and Helena to the West.

Among the tariffs suspended in this proceeding is Frank Anderson, agent's, tariff I. C. C. No. 7, in which it is proposed to increase the rates on lumber from Memphis and Helena to points in Iowa, Minnesota, Missouri, and other states west of the Mississippi River. There is little evidence in the record in support of the proposed rates. There are general statements to the effect that the respondents' object in publishing this tariff was to consolidate in one issue the individual tariffs of a number of lines and "place them on a proper basis," but the result has been to make 2,755 increases in the rates on cottonwood and gum lumber and 3,232 increases in the rates on other kinds of lumber, though there are also many reductions. It is stated that the composition of this tariff was begun prior to the present proceeding and that any increases in the rates to Cairo allowed in this proceeding would necessitate a further revision of the rates to points west of the river. Exhibits filed by the respondents indicate that the increases vary from 1 cent to 2 cents. The respondents explain that the suspended rates have been constructed by taking the local or proportional rates to Cairo, St. Louis, or the other crossings, and adding thereto the local or proportional rates beyond. In many instances the proposed increases seem to have been due to previous increases in the rates west of the gateways, but the evidence does not show when these increases were made, or that the proposed rates are reasonable. We find that the proposed rates have not been justified, except that the proposed rates on hardwood, including cottonwood and gum, will be allowed to the extent that they do not exceed the present rates on yellow pine.

Proposed Increases on Gum and Cottonwood.

East of the Mississippi River, and particularly in the Mississippi Valley territory, the rates on gum and cottonwood lumber have for many years been considerably lower than the rates on other lumber. In this territory the hardwood rates are in some cases below the yellow-pine level, but cottonwood and gum are on a basis still lower

than the hardwood basis. The suspended tariffs propose to raise both gum and cottonwood to the hardwood level—a proposal which has aroused more vigorous protests than any other involved in the present proceeding. The rates on cottonwood and gum have been so much lower than the rates on other woods that the increases made by the respondents to raise them to their “normal” level are material, in some instances as high as 40 per cent. The respondents allege that the lower rates accorded to cottonwood and gum have been a voluntary concession to those kinds of wood, made for the purpose of aiding them to establish themselves in the markets, and that there is no transportation reason why gum and cottonwood lumber should take lower rates than the other hardwoods. Producers of gum and cottonwood contend, on the other hand, that these woods differ from others in their history, their value, and in the profit derived from their production, and that the differences are sufficiently pronounced to warrant a finding by the Commission that gum and cottonwood lumber should move on lower rates than the other hardwoods.

Much of the testimony has been addressed to this issue. It is not seriously contended that cottonwood is materially less valuable than other kinds of wood. The evidence shows beyond a doubt
99 that cottonwood is not entitled to a special rate. We shall therefore confine our attention to the issue as to the status of gum lumber. The proposed rates on cottonwood lumber will therefore be approved, to the extent that they do not exceed the rates contemporaneously in effect on other hardwood lumber from the same points.

The extent of the increases in the rates on gum lumber from this territory is illustrated by the increases from groups 7 and 9, which are in the delta section, where the production is heaviest. From group 7 the increases are as follows: 2½ cents to St. Louis, New Albany, Jeffersonville; 3 cents to East Cairo, Paducah, and Cincinnati; 3½ cents to Henderson, Owensboro, and Louisville; 4 cents to Cairo, Brookport, and Metropolis; and 4½ cents to Evansville. The proposed increases in group 9 are similar in amount.

The record shows that producers of gum lumber have labored under unusual difficulties in establishing their product in the markets. Not many years ago gum timber was considered almost valueless. Owners of timberland would give it to anyone who would undertake to remove it. The prejudice against it was considerably greater than that against other southern woods, and it was in some measure justified. Experienced lumbermen testified that no lumber warps so badly as gum, and that for many years no method of seasoning was known which would overcome this difficulty, which seems to have been due, at least in part, to the unusually large amount of sap in this kind of timber. Processes have been discovered which now make it possible to season gum lumber without warping, but they usually take more time and involve more expense than is involved in seasoning other kinds of lumber.

The stands of gum timber in the southeast and southwest are much more extensive than is commonly supposed. An exhibit filed by one of the protestants shows that 48.6 per cent of the standing timber

in a typical southern hardwood forest is gum. The heaviest production of gum lumber is in Arkansas and Mississippi, those two states alone producing annually about 47 per cent of the red gum lumber of the United States. A number of the principal producers of hardwood lumber in this region testified that more than 50 per cent of their total production consists of gum lumber.

Several different qualities of wood varying greatly in value are found in the same gum tree. Statistics compiled by one of the principal protestants and covering its operations for the period of 1910-1913 shows that about 18 per cent of the tree consists of what is known as first and second red gum, the value of which is about \$23.60 per 1,000 feet. This lumber is used as a substitute for the more valuable hardwoods, especially in making furniture.

100 About 2 per cent of the tree consists of box-board wood, the value of which is about \$21.25 per 1,000 feet. Somewhat more than 20 per cent of the tree consists of what is known as first and second sap gum, averaging \$14.75 per 1,000 feet in value. Still lower qualities are Nos. 1 and 2 common sap gum, the average value of which is in the neighborhood of \$10 per 1,000 feet, and which constitutes about 30 per cent of the tree. Thirteen per cent of the tree consists of No. 3 common gum, which is worth only about \$7.60 per 1,000 feet and which, even under the present freight rates, can not be produced to advantage.

The figures given in the preceding paragraph will indicate in a general way the relative values of these woods. Exhibits filed by numerous protestants show that the log run value of gum lumber is in normal times somewhat over \$16 per 1,000 feet. During the last year, and especially since the outbreak of the war in Europe, there has been an unusual depression in the lumber industry, and gum lumber, in common with other kinds, has fallen materially in value. An exhibit filed on behalf of one of the principal protestants shows that for the first six months of 1913 the log run value of red gum and sap gum was \$18.31 per 1,000 feet, while for the same period in 1914 the log run value was approximately \$15.75 per 1,000 feet. Producers of gum lumber are unanimous in saying that this reduction in the value of gum lumber has practically eliminated the slight profit which they derived from this business in normal times, and that any further increase in the freight rate under present conditions would make it impossible for them to continue their operations.

The following table, taken from one of protestants' exhibits, shows the values of the different grades of gum lumber, the percentage of the different grades in each tree, and indicates the depression in prices which began in 1913:

Statement Showing Selling Prices of Gum Lumber F. O. B. Charleston, Miss., for the Year 1913.

[Basis, Memphis Prices as Quoted by Lumbermen's Bureau, Washington, D. C., and Deducting Therefrom \$1.50 Freight on Red Gum and \$1.25 on Sap Gum.]

Grade.	Per cent of tree.	Jan., 1913.	Dec., 1913.	Oct., 1914.
First and second red	18	\$33.50	\$27.00	\$23.50
No. 1 common	16	19.50	16.00	14.50
Box boards	2	23.25	23.25	21.25
First and second sap	20.5	18.25	16.75	14.75
No. 1 common sap	13.5	13.75	12.75	11.25
No. 2 common sap	17	11.50	10.50	9.00
No. 3 common sap	13	8.00	7.00	7.50
Log run	100	18.21	15.72	14.02

101 The prejudice which formerly existed against red-gum lumber has been largely overcome. A report of the United States Department of Commerce and Labor for 1912 says:

Arkansas produces more red-gum lumber than any other state, and one-half the mill output is further manufactured at home. The rise of this wood from obscurity to prominence has been phenomenal. Once considered practically worthless, it now stands high among furniture and finished woods for musical instruments and for many other purposes. It may be successfully finished to imitate Circassian walnut, oak, mahogany, and other expensive cabinet woods. Its own grain, finished naturally from carefully selected logs, is scarcely surpassed by any wood of this country. In Europe it is known as satin walnut.

A similar document, issued by the same department in 1911, says:

Though the production of red-gum lumber does not seem to be increasing the wood is growing in popularity and is much sought by those who use it to imitate more costly woods. * * * When exported to Europe it is generally known there as "satin walnut" and "hazlewood." The difficulty met with in seasoning it formerly stood in the way of extending its usefulness, but this has been largely overcome.

Other reports issued by the same department show that more veneer and cooperage stock is now made from gum than from any other American wood.

The record leaves no doubt that the special rates accorded to gum and cottonwood lumber from points on the lines of the Illinois Central Railroad and the Yazoo & Mississippi Valley Railroad constitute a marked exception to the general rule. Although gum lumber is produced in enormous quantities in Arkansas and Louisiana, the rates on gum lumber from those states to the principal gateways are almost without exception the same as the rates on other hardwoods. Furthermore, it appears that gum lumber does not load as heavily as other hardwoods.

In Lumber Rates—Southern Ry. Points to Eastern Points, 31, I. C. C., 224, involving rates on lumber from North Carolina and Tennessee to eastern destinations, we had occasion to consider the propriety of an adjustment whereby spruce and hemlock had been accorded lower rates than other kinds of lumber. We there said:

Despite the desirability of a more uniform adjustment, it may be well here to point out the serious defects that impress us in the schedules proposed. In the record here made it seems evident that the maintenance of different rates on the different grades of lumber based on value has not been justified. In official classification territory the carriers maintain the same rates on all kinds of lumber except those of such distinctly higher value as to be properly distinguishable. Apparently that plan was formerly in effect in this territory, but departures were begun upon the representation of some shipper that hemlock could not move on the general lumber rate. It was there-

fore put upon a preferred basis. Inevitably the spruce operators contended that that timber was in competition with hemlock, and it followed to a lower level. Producers of pine, gum, maple, beech, chestnut, and birch might easily make similar representations and the complexity of the rate structure be indefinitely increased. The effort of revision should be directed toward the uniformity existing in the northern territory.

In Northbound Rates on Hardwood, 32 I. C. C., 528, evidence was introduced showing the adverse conditions under which the producers of hardwood in the southwest were operating. In that connection we said.

There is much evidence that the hardwood industry in the southwest is suffering from adverse conditions. In recent years substitutes of various kinds have replaced hardwoods in the manufacture of containers and of parts of containers. Some of the shippers testified that the trade prejudice already mentioned still works to their detriment. It was also testified that conditions such as these, linked with others, have resulted in a depression affecting the whole industry in that region, and that in consequence only the larger and better growth and higher grade is being utilized. The result is waste, both in logging and in manufacture. There is some evidence that this waste is greater than in the yellow-pine industry.

But however this may be, and whatever effect the existence of such industrial conditions might have in prompting the voluntary institution or maintenance by carriers of rates which in other respects would be regarded as exceptionally low, this Commission will not require the respondents to maintain such rates on the facts disclosed in this record. We are here dealing with a transportation problem as distinguished from an industrial problem, however frequent or intimate the points of contact.

One of the principal objections which shippers in the delta section have to the proposed rates is that they will be unable to ship under them. The respondents point out, however, that many producers of gum lumber located west of the Mississippi River are now shipping at rates higher than those proposed from the territory east of the river.

After a careful consideration of all the evidence of record we con-

clude that gum lumber should not be accorded special rates. We are convinced from the evidence that the difficulties under which producers of gum lumber are now operating are due in no small measure to the depression which followed upon the outbreak of the European war. The evidence shows conclusively that the decline in the value per 1,000 feet of gum lumber during the last year has been materially greater than the increased cost per 1,000 feet which will result from the proposed freight rates. It is not fair in gauging the reasonableness or unreasonableness of a particular rate to consider the value of the commodity in its most unfavorable period. While it is undoubtedly true that gum lumber is one of the cheaper grades of wood, the record shows beyond a doubt that in normal times its average value runs closely up to the value of other woods which are now moving at materially higher rates. If we should hold in the present proceeding that gum lumber is entitled to a special rate because of the peculiar difficulties now incident to the production of that kind of lumber, not only would the carriers west of the river have to accord special rates to gum lumber, but it is not at all impossible that producers of other kinds of lumber would be able to show that they, too, are operating under unusual difficulties, that the value of their lumber has declined, and that they are therefore entitled to more favorable rates. Not without significance in this connection is the fact that counsel for one of the protestants has filed as exhibits letters written by numerous lumber dealers which purport to show that southern oak is greatly inferior to northern oak; that it is very hard, heavy, and liable to warp, and that it "honeycombs, twists, and buckles when kiln-dried, which defects cause serious waste."

It should be added that the respondents propose to reduce the rates on walnut, cherry, and cedar from this territory to the same basis as the rates on common lumber. While it is doubtless true that the movement of these kinds of wood is small, uniformity in the lumber rates is desirable.

We are therefore of opinion and find that the proposed rates on gum lumber have been shown to be reasonable to the extent that the rates on other hardwoods are observed as maxima.

Increases from Points on the Alabama Great Southern and the New Orleans & Northeastern.

The proposed increases on the Alabama Great Southern and New Orleans & Northeastern railroads, which serve the pine-producing section in the southern end of the Mississippi Valley, vary from one-half cent to 1 cent per 100 pounds. From stations between Attala, Ala., and York, Ala., excluding York, the proposed rates to Louisville, Henderson, and Owensboro have been increased from 17 cents to 17½ cents, and from stations York to Meridian, Miss., from 19 cents to 19½ cents. To Cincinnati, St. Louis, and Cairo a uniform increase of 1 cent has been made. The average increase to north bank points is less than 1 cent. The proposed adjustment at other points on these lines is similar. Except at the Cairo and Cincinnati crossings it appears that there already exists a spread of at least 1 cent between

the north bank and the south bank points. Where such spread already exists no increases to north bank points will be permitted. At crossings where the rates to north bank and south bank points are now the same, an increase of 1 cent in the rates to the former will be permitted. The proposed rates to St. Louis have been justified.

104 Proposed Increases in Rates from Chattanooga, Tenn.

The only increases which are proposed in the rates from Chattanooga to the Ohio River crossings are such as were necessary to establish a differential of 1 cent between north bank and south bank points at each crossing. The rates have previously been the same to all the crossings, 13 cents per 100 pounds, no difference having been made between the rates to north bank and south bank points. It is now proposed to make the rates to all the north bank points proper 14 cents and the rates to all the south bank points 13 cents, and a similar increase is made in the rates to St. Louis. The following table shows the distances, the present rates, the proposed rates, and the revenues per ton-mile from Chattanooga to the principal crossings.

From Chattanooga, Tenn., to—	Miles.	Revenue		Revenue	
		Present rate. Cents.	per ton- mile. Mills.	Proposed rate. Cents.	per ton- mile. Mills.
Cincinnati, Ohio	338	13	7.7	14	8.3
Louisville, Ky.	314	13	8.3	13	8.3
Evansville, Ind.	309	13	8.7	14	9
Paducah, Ky.	332	13	7.8	13	7.8
Cairo, Ill.	350	13	7.4	14	8
St. Louis, Mo.	500	18	7.2	19	7.6
Average	357	13¾	7.8	14½	8.1

The evidence shows that if the spread between north bank points and the south bank points had been accomplished by reductions rather than increases, corresponding reductions in the rates to and from an important intermediate territory would have been required, and while the present rates are not extraordinarily low, they are not so high as to warrant a finding that the rates to south bank points should be reduced to effect the spread of 1 cent between opposite crossings. We therefore find that the proposed rates have been shown to be reasonable.

Increases from Points on the Nashville, Chattanooga & St. Louis Railway.

The Nashville, Chattanooga & St. Louis Railway is primarily a Tennessee line, 899 miles of its total of 1,231 miles of railway being within that state. Tennessee ranks second in the production of oak, hickory, and poplar, and 95 per cent of the lumber handled by this carrier consists of hardwood.

It is proposed to increase by 1 cent the rates to Evansville, Cincinnati, Cairo, and St. Louis. A large number of reductions, ranging from 1 cent to 3½ cents, have been made, principally in the rates to New Albany, Jeffersonville, Brookport, Metropolis, and Louisville.

105 Exhibits have been filed comparing the proposed rates with others in the same general territory, which tend to show that the proposed rates are not unduly high. A large portion of the territory served by the Nashville, Chattanooga & St. Louis Railway is mountainous and sparsely settled, and there are a large number of branch lines which depend principally upon forest products for their tonnage. The record further shows that comparatively little lumber is produced along the Western & Atlantic, which is operated by the Nashville, Chattanooga & St. Louis Railway. Considering the operating conditions of this road as a whole, it may be said that the rates to the crossings compare favorably with those from points on the Mississippi Valley lines. We therefore find that the proposed rates have been shown to be reasonable to the extent that they do not exceed by more than 1 cent the rates now in effect.

Increases from Points on the Southern Railway.

The proposed increases in the rates from points served by the Southern Railway may be divided into three groups: First, rates from the Memphis division, which runs from Chattanooga to Memphis; second, from stations on the Knoxville division between Chattanooga and Knoxville; third, rates from the pine-producing area south of Chattanooga, including the line from Atlanta to Columbus, Miss., the Mobile division from Birmingham to Mobile, and the line from Atlanta to Brunswick, Ga., and its branches.

The Memphis division of the Southern Railway is intersected by the Nashville, Chattanooga & St. Louis Railway, the Louisville & Nashville Railroad, the Mobile & Ohio Railroad, and the Illinois Central Railroad, and the rates carried by these lines from the junction points determine the rates charged by the Southern Railway from the same points. The Commission's Fourth Section Order No. 3275, dated September 29, 1913, gave the Southern Railway permission to charge higher rates from intermediate points than from Memphis and certain junction points, provided a certain relationship was maintained between the rates. The suspended rates from both junction points and intermediate points have been advanced to the same extent, so that the relationship required by the Commission's fourth section order has not been disturbed. The evidence shows that the distances to the Ohio River crossings from points on the Memphis division of the Southern Railway are from 50 to 100 per cent greater in many cases than the rates by the more direct routes. We therefore find that the proposed rates to the north bank Ohio River crossings from points on this division of the Southern Railway have been shown to be reasonable to the extent that they do not exceed by more than 1 cent the rates now in effect to opposite south bank crossings.

106 The increases made in the rates from points on the Knoxville division are in no case in excess of 1 cent per 100 pounds. No change has been made in the rates to any of the south bank points. The record shows that it has been customary to maintain the same rates from Knoxville as from Chattanooga, and the proposed rates from both points as well as from the intermediate points are the same. The suspended rate from Chattanooga and Knoxville to Cincinnati is 14 cents and to Louisville 13 cents, the present rate. We are of opinion and find that the rates from points on the Knoxville division to north bank points have been shown to be reasonable to the extent that they do not exceed by more than 1 cent the rates now in effect to south bank points.

The extent of the increases from points on the Mobile division of the Southern Railway is the same as from points on the Mobile & Ohio Railroad serving the same territory. We therefore find that the same increases may be made in rates from stations on the Mobile division of the Southern Railway as have been approved from stations on the Mobile & Ohio Railroad serving the same general territory. From points on and west of the Chattanooga-Pensacola line rates to the Ohio River crossings proper to the north bank crossings have been increased from one-half to 1 cent. The rates to Louisville, however, have also been increased by one-half cent, and this has occasioned an increase of $1\frac{1}{2}$ cents to some north bank points. The evidence of record does not justify the increase of the Louisville rates, nor does it show that in any case the rates to the north bank points should be increased by more than 1 cent. From points east of the Chattanooga-Pensacola line, particularly in Georgia and Florida, increases are proposed similar to those which have already been considered. The average increase to north bank points is 1 cent.

We have previously referred to the fact that a dual system of rates exists in the southeastern territory, the proportional rates to the gateways being in most instances somewhat less than the rates to the crossings proper. Of these proportional rates the one to Cairo is of prime importance because it is lower than any of the others. To practically all points in central freight association territory the rates are made by using the proportional rate to Cairo plus the rate beyond. The increases in the proportional rates from the southeastern territory to the crossings are generally 1 cent.

We are of opinion and find that the proposed increases in both the local and proportional rates from points on the Southern Railway in the southeastern territory to the north bank Ohio River crossings have been shown to be reasonable to the extent that they do not exceed by more than 1 cent the rates now in effect to

107 south bank points.

Increases from Points on the Central of Georgia Railway.

From points on the Central of Georgia Railway and its connections there is proposed a uniform advance of 1 cent to most of the north bank points. Except in a few instances, there

are no increases to south bank points. The principal producing territory served by this carrier is the pine region of southeastern Alabama and southern Georgia, and a large part of the traffic comes from such branch-line connections as the Atlanta & St. Andrews Bay Railway and the Flint River & Northeastern Railroad. Rates from the branch-line points are from 1 to 1½ cents higher than the rates from stations on the main line, and it is proposed to increase them to the same extent as the rates from the main-line points.

The following table, compiled from one of the exhibits, shows the proposed rates from representative stations on the Central of Georgia Railway, the short-line distances to the principal gateways, and the revenues per ton-mile under the proposed rates:

From—	To Cairo, Ill., proper.			To Louisville, Ky., proper.			To Cincinnati, Ohio, proper.		
	Rates.	Dis- tance.	Revenue per ton- mile.	Rates.	Dis- tance.	Revenue per ton- mile.	Rates.	Dis- tance.	Revenue per ton- mile.
	Cents.	Miles.	Mills.	Cents.	Miles.	Mills.	Cents.	Miles.	Mills.
Albany, Ga. . .	23	590	7.80	22	651	6.76	23	685	6.72
Augusta, Ga. .	23	755	6.09	22	717	6.14	23	743	6.19
Coffee Springs, Ala.	22	712	6.18	21	773	5.43	22	807	5.45
Macon, Ga. . .	23	590	7.80	22	552	7.97	23	578	7.96
Savannah, Ga.	23	781	5.89	22	743	5.92	23	786	5.85

Another exhibit filed on behalf of the Central of Georgia Railway shows that the proportional rates to Cairo from representative points on the line of that carrier are comparatively low. From Albany, Ga., for example, the proportional rate to Cairo is 16 cents for a distance of 590 miles, making a ton-mile revenue of 5.42 mills. From Dothan, Ala., the rate is 15 cents and the distance 673 miles, making the earnings per ton-mile 4.46 mills. From Savannah, Ga., the rate is 16 cents and the distance 781 miles, yielding a revenue per ton-mile of 4.10 mills. The rates from other points are correspondingly low.

Upon consideration of all the evidence we are of opinion and find that the proposed rates on lumber, both local and proportional, from points on the Central of Georgia Railway and its connections to north bank points have been shown to be reasonable to the extent that they do not exceed by more than 1 cent the rates now in effect to south bank points.

Increases from Atlantic Coast Line Points.

The proposed adjustment on the Atlantic Coast Line is similar to that on the Central of Georgia. The distances to the Ohio River crossings from representative points on the Atlantic Coast Line in Georgia and Florida vary from about 550 to about 800 miles, the proposed rates to the crossings proper from representative Georgia and Alabama points varying from 22 cents to 24 cents. The average ton-mile revenue yielded by the rates from

representative points to Cincinnati is 6 mills; to Jeffersonville and New Albany, 6.5 mills; to Cairo proper, 6.7 mills; and to St. Louis, 5.4 mills. Exhibits show that the revenues per ton-mile yielded by these rates are lower than those yielded by the rates from the same territory to equidistant points in North Carolina and Virginia. The proportional rates to Cairo from stations on the Atlantic Coast Line are materially lower than the rates to Cairo proper. While the proposed rates to Cairo proper from representative points in Alabama and Georgia are 22 cents or 23 cents, the suspended proportional rates to Cairo vary from 15 cents to 17 cents. The importance of the proportional rate to Cairo already has been explained.

We are of opinion and find that the proposed increased rates on lumber to the north bank Ohio River crossings and St. Louis have been shown to be reasonable to the extent that they do not exceed by more than 1 cent the rates now in effect.

Proposed Increases from Points on the Louisville & Nashville Railroad.

The Louisville & Nashville Railroad proposes to make numerous increases in the rates from stations on its line to the Ohio River crossings which it reaches and to St. Louis. Both pine and hardwood are found in abundance on portions of this railroad. Generally speaking, the territory south of Decatur, Ala., produces pine while the territory north of that point produces hardwood. The pine territory south of Decatur is divided into two groups for rate-making purposes. Group 1 embraces the stations from Oakworth, Ala., the first station south of Decatur, to and including Montgomery, Ala.; while group 2 includes all stations south of Montgomery to New Orleans, including branch-line points. The rates from group 2 are 2 cents higher than the rates from group 1, a relationship which has obtained for a number of years. We shall deal first with the proposed increases from these groups.

109 The present rates to the crossings from the southern part of the pine section are as follows:

To—	Cents.	To—	Cents.
Covington	21	New Albany	20
Newport	21	Henderson	19
Cincinnati	21	Owensboro.....	19
Louisville	19	Evansville	20
Jeffersonville	21.1	St. Louis	21

It will be observed that with the exception of the Cincinnati crossing the rates to north bank points are at least 1 cent higher than the rates to the points located on the south bank. We assume that the differentials in each case represent the bridge tolls at the respective crossings. The rates from group 1, being uniformly 2 cents less than the rates from group 2, show the same differentials. It is proposed to make the Cincinnati rate from group 2 stations 22

cents, continuing the rate of 21 cents to Covington and Newport so as to effect a spread of 1 cent between the two latter points, which are on the south bank, and Cincinnati, which is a north bank point. In the second Norman Lumber Co. case we established a differential of 2½ cents as between Cincinnati and Louisville on traffic originating in the southern part of the Mississippi Valley. Since the Mobile & New Orleans branch of the Louisville & Nashville Railroad operates in that territory, the proposed rates have been made to observe that differential, the rate to Louisville being increased from 19 cents to 19½ cents and the rate to Cincinnati from 21 cents to 22 cents.

The present and proposed rates, in cents per 100 pounds, on common lumber from Memphis to the Ohio River crossings are shown below:

From Memphis to—	Present rate. Cents.	Proposed rate. Cents.	Distance. Miles.
Cincinnati, Ohio	15	16	48
Covington, Ky.	15	15	48
Newport, Ky.	15	15	48
Louisville, Ky.	12	12.5	37
Jeffersonville, Ind.	14	13.5	37
New Albany, Ind.	13	13.5	377
Owensboro, Ky.	12	12.5	304
Henderson, Ky.	11	11.5	309
Evansville, Ind.	12	12.5	321
St. Louis, Mo.	12	12.5	485

It will be observed from this table that the present rates from Memphis also include allowances for bridge tolls at all the crossings except Cincinnati. From 35 stations on the Memphis 110 division directly east of Memphis the rates are the same as from Memphis, and the proposed rates show similar increases.

It is also proposed to increase the rates from territory north of Decatur, north of Tusculumbia, Ala., and also from the stations north of Knoxville. There are comparatively few increases in this territory, most of the rates remaining unchanged. Exhibits filed by the Louisville & Nashville Railroad show that the rates to Cincinnati, Covington, and Newport are the same, but that the rates to the other crossings reflect a bridge toll varying from 1 cent to 2.1 cents.

It is also proposed to increase the rates from Knoxville and points south. The record shows that at the present time the rates from these stations to all the north bank points except Jeffersonville are the same as the rates to the opposite south bank points, and the proposed increases have been made for the purpose of establishing a 1-cent differential between the north bank and the south bank points.

It is also proposed to increase the rates from Nashville and Eden-

wold, Tenn., which take the same rates to all the crossings. The present rates from Nashville are as follows: To Cincinnati, Covington, and Newport, 13 cents; to Louisville, Owensboro, and Henderson 9 cents; to Evansville, 10 cents; to Jeffersonville and New Albany, 11.1 cents; to St. Louis, 13 cents. It is proposed to increase the Cincinnati rate from 13 cents to 14 cents, while continuing the 13-cent rate to Covington and Newport in order to effect a 1-cent spread. It is also proposed to increase the Louisville rate from 9 cents to 10 cents.

In order to establish the reasonableness of the proposed rates from the various stations on its line, this respondent has relied chiefly upon a number of exhibits comparing the proposed rates with other rates. Nearly all of the comparisons, however, are with rates applying in a territory which can scarcely be deemed fairly comparable with that served by the Louisville & Nashville Railroad. The reason for this, as given by the respondent, is that practically all of the rates east of the Mississippi River are involved in the present proceeding, so that if comparisons were made between the proposed rates and other rates in the same territory, a comparison would be made between rates all of which are involved in the present proceeding. It is not alleged that the operating conditions on the Louisville & Nashville Railroad are unusually difficult. The rates with which the proposed rates are compared, however, apply between points west of the Mississippi River located in a region which this Commission has expressly recognized as being of such a nature as to warrant the charging of higher rates than the rates in effect east of the Mississippi River. Inasmuch as the rates from practically all of the stations on the Louisville & Nashville Railroad are now higher to north bank points on the Ohio River than the rates to the south bank points, this carrier is precluded from

111 making the explanation that the increases are proposed for the purpose of making the rates to north bank points include the bridge toll. In other words, this respondent, in order to establish the reasonableness of the increased rates, would have to show that the present rates, excluding the bridge toll, are not sufficiently remunerative. This has not been shown by the evidence of record.

A vigorous protest against the proposed increases in the rates from Nashville to the Ohio River crossings has been made by the Nashville Lumbermen's Club. The distances from Nashville to the various crossings, the present rates, and the revenues per ton-mile yielded thereby are shown in the following table submitted by this protestant:

	Miles.	Rate.	Revenue per ton-mile.	Revenue per loaded car-mile.
		<i>Cents.</i>	<i>Mills.</i>	<i>Mills.</i>
Louisville, Ky.	187	9.0	9.6	23.6
Cincinnati, Ohio	301	13.0	8.6	21.1
Owensboro, Ky.	142	9.0	12.7	31.0
Henderson, Ky.	145	9.0	12.4	30.1
Evansville, Ind.	158	10.0	12.7	31.0
St. Louis, Mo.	323	13.0	8.1	19.7
Average, all freight.....	171	6.66	7.78	15.9

We are of opinion and find that the proposed increases in the rates on lumber from points on the Louisville & Nashville Railroad to the Ohio River crossings and to St. Louis have not been shown to be reasonable, except that rates to north bank points may be increased by not more than 1 cent when such increase is necessary to make the rates to north bank points 1 cent higher than to the opposite south bank points. The proposed rates from Memphis are shown to be reasonable to the extent that they do not exceed those approved herein via other lines.

Rates Proposed by the St. Louis & San Francisco Railroad East of the Mississippi River.

The St. Louis & San Francisco Railroad operates a line of railway from Birmingham to Memphis. It proposes to increase the rate from about 40 stations on this line to St. Louis, East St. Louis, and the Ohio River crossings. The only points to which the increased rates apply which are reached by this railroad are Memphis, St. Louis, and East St. Louis. The Birmingham-Memphis line is intersected at several points by the direct north and south lines, whose rates to all the crossings are followed by the St. Louis & San Francisco Railroad. Though this carrier reaches St. Louis with its own rails, the Louisville & Nashville Railroad, which is the short line to

112 St. Louis, is said to make the rates to that crossing. To establish the reasonableness of the proposed rates this respondent relies principally upon the evidence submitted by the north and south lines. We therefore find that the rates proposed are reasonable to the extent that the increases therein do not exceed those herein allowed in the rates to the respective crossings from junction points of this line with those of the north and south lines.

Proposed Increases from West Side Lines to Ohio River Crossings

A number of the lines west of the Mississippi River have rates to the Ohio River crossings which are higher by certain arbitrarities than the rates made by the east side lines to the same crossings. From stations on the Vicksburg, Shreveport & Pacific Railway the rates

to the crossings have for years been 2 cents higher than the rates from yellow-pine territory in southern Mississippi.

Stations on the Southern Pacific system lines in Louisiana are divided into three groups. Group 1 consist- of all stations from New Orleans to Alexandria on Morgan's Louisiana & Texas Railroad, and the rates are uniformly 2 cents higher than the rates made by the east side lines from New Orleans to the Ohio River crossings. Group 2 includes all stations on the the Louisiana Western Railway from Scotts to Sabine River. Group 3 includes all stations on Lake Charles & Northern Railroad, L. W. Junction to Nitram, inclusive. From the last two groups the rates are generally 3 cents higher than the rates from New Orleans. A few departures from this basis exist in those instances where the line of this carrier is intersected by the direct north and south lines. The average distance from group 1 points to New Orleans is 135 miles and from groups 2 and 3 the average distance is 249 miles.

The rates from stations on the Texas & Pacific Railway are similarly grouped. From Harvey, La., the first station west of New Orleans, the rate is 1 cent higher than the rate from New Orleans. From a large number of stations west of Harvey, the average distance from which to New Orleans is 137 miles, the rate is 2 cents higher than the rates from New Orleans.

The evidence shows that the arbitraries over the New Orleans rate charged by these western lines are not unreasonable. They will, therefore, be permitted to increase their rates to the Ohio River crossings to the same extent that the increases proposed by the east side lines are approved in this report.

Proposed Increases in Eastbound Rates from Cincinnati.

In *Norman Lumber Co. v. L. & N. R. R. Co.*, 29 I. C. C., 565, at page 578, we said:

In conformity with *Williams Co. v. V., S. & P. Ry. Co.*, supra, we hold that, while the present differentials may be proper for 113 points involved in this part of the complaint which are within 500 miles of Cincinnati, the rates from Louisville to the points of destination over 500 miles from Cincinnati should not exceed the rates from Cincinnati by more than $2\frac{1}{2}$ cents per 100 pounds.

The rates from Louisville to points in trunk line territory when the decision in the above case was rendered were generally $3\frac{1}{2}$ cents higher than the rate from Cincinnati. The northern lines propose to effect the prescribed relationship by increasing the rates from Cincinnati by 1 cent. After the tariffs carrying these proposed increases were published we issued our report in the Five Per Cent case, in which an increase of 5 per cent was permitted in the rates on lumber from both Louisville and Cincinnati to trunk line points. The situation is set forth in part in the following table, compiled from one of respondents' exhibits:

Statement Showing Record of Rates on Lumber, Carloads, from Cincinnati and Louisville, Ky., to Central Freight Association Territory and Trunk Line Points Prior to and Subsequent to Decision in Norman Lumber Co. v. L. & N. R. R. Co. et al., 29 I. C. C., 565.

To—	Rates in effect at time decision in Norman Lumber Co. case was rendered.				Rate from Louis- ville, Ky., based on 5 per cent advance.	Rate from Cincin- nati, Ohio—	
	From Louis- ville, Ky.		From Cincin- nati, Ohio.			Based on 5 per cent advance.	Proposed in the present case.
	Miles.	Rate.	Miles.	Rate.			
		Cents.		Cents.			
Wheeling, W. Va....	372	14.0	258	10.0	14.7	10.5	11.0
Pittsburgh, Pa.	427	14.0	313	10.0	14.7	10.5	11.0
Buffalo, N. Y.....	560	14.0	446	10.0	14.7	10.5	11.0
Salamanca, N. Y....	574	14.0	400	10.0	14.7	10.5	11.0
New Castle, Pa.....	428	14.0	314	10.0	14.7	10.5	11.0
Youngstown, Ohio ..	413		299				
Sharon, Pa.	427		313				
Rochester, N. Y.....	628	16.5	514	12.5	17.5	13.5	14.0
Albany, N. Y.....	857	21.5	743	18.0	22.7	19.2	19.0
Utica, N. Y.....	762	20.0	648	16.5	21.2	17.7	17.5
Syracuse, N. Y.....	708	18.0	594	14.5	18.9	15.0	15.5
Reading, Pa.	730	20.5	616	17.0	21.6	18.3	18.
Harrisburg, Pa.	676	19.5	562	16.0	20.6	17.3	17.
Baltimore, Md.	707	19.5	593	16.0	20.6	17.3	17.0
Philadelphia, Pa. ...	780	20.5	666	17.0	21.6	18.3	18.0
New York, N. Y.....	871	22.5	757	19.0	23.6	20.5	20.0
Boston, Mass.	1,059	24.5	945	21.0	25.6	22.5	22.0

Rochester, N. Y., is the first point which is more than 500 miles from Cincinnati and is therefore the first point affected by the decision referred to. The figures in the last column show the proposed rates, but they do not take into consideration the increase permitted in the Five Per Cent case. It appears from the testimony of respondents' witnesses that it is the carriers' purpose to add 5 per cent to the Louisville rates and arrive at the Cincinnati rates by deducting 2½ cents. This results in material increases in the rates from Cincinnati. To illustrate: The rate formerly in effect from

Louisville to New York was 22.5 cents and from Cincinnati 114 to New York 19 cents. Our decision in the Five Per Cent case permitted respondents to increase the Louisville rates to 23.6 cents. If 2½ cents be deducted from this rate to arrive at the Cincinnati rate, the result is 21.1 cents, an increase of 2.1 cents, or 11 per cent over the rate of 19 cents previously in effect. The rate to Rochester would similarly be increased from 12.5 cents to 15 cents. While no readjustment in the rates from Louisville and Cincinnati to western termini points was required by our decision in the Norman Lumber Co. case, the above table shows that it is proposed to increase the rates from Cincinnati to those points from 10 cents to 11 cents. Group rates apply to the western termini from both Louisville and Cincinnati. The rate from Louisville was 14 cents prior to our decision in the Five Per Cent case, and in consequence of that decision it became 14.7 cents. The respondents pro-

pose to arrive at the Cincinnati rate by deducting 3 cents from the Louisville rate, though the spread was formerly 4 cents, so that the rate from Cincinnati to all the western termini points will be increased from 10 cents to 11.7 cents. Our decision in the Norman Lumber Co. case did not require these increases, but the respondents explained that they have been made "because the carriers desire to maintain as closely as possible the relative adjustment as between the termini points and the first station point covered by the Commission's decision in the Norman Lumber Co. case," and also because the carriers have long thought that the rates were too low. The average distances from Cincinnati and Louisville to the western termini points are 343 miles and 457 miles, respectively, and the earnings per ton-mile under the proposed rates 6.8 mills and 6.4 mills.

To establish the reasonableness of the proposed rates, and especially to show that the desired readjustment should be effected without reductions in the rates from Louisville, the respondents rely chiefly upon several exhibits which show the rates and earnings on lumber from Ohio and Mississippi river crossings to eastern points. These exhibits show that the ton-mile earnings yielded by the rates from Louisville are practically the same as the rates from more distant crossings, such as Evansville, Cairo, and East St. Louis, and in some cases lower, and it is argued from this that there should be no reduction in the rates from Louisville. While this contention is not without merit, it obviously does not establish the reasonableness of the proposed increased rates from Cincinnati. The protestants show that under the Commission's supplemental order in the Five Per Cent case the carriers were permitted to increase the rates from Cincinnati to points in trunk line territory somewhat more than 5 per cent in order to maintain the relationship which had previously existed between Lexington, Ky., and Cincinnati. It is shown, for example, that the rate from Cincinnati to Boston was formerly 21 cents; that a 5 per cent increase would have made the rate 22.05 cents, whereas the actual increase is $1\frac{1}{2}$ cents, making the rate $22\frac{1}{2}$ cents. The rates to New York and related points had similarly been increased by $1\frac{1}{2}$ cents, although a 5 per cent increase of the former 19-cent rate would have been slightly less than 1 cent.

The protestants further point out that evidence submitted in the Five Per Cent case shows that the average revenue earned by 69 carriers in official classification territory on lumber in October, 1913, for an average distance of 187 miles, was 5.4 mills, which is considerably less than the earnings under the proposed rates for much greater distances.

There is no evidence of record which would warrant the conclusion that the present rates are not remunerative. They have been increased by more than 5 per cent within the past six months, and, as so increased, they are at least as high as other rates in the same territory.

If the readjustment should be accomplished by retaining the rates from Cincinnati to points in trunk line territory, as increased as a

result of the decision in the Five Per Cent case, and adding thereto $2\frac{1}{2}$ cents to arrive at the rates from Louisville, most of the rates from Louisville would still be slightly higher than they were prior to the 5 per cent increase, as is shown in the following table:

From Louisville, Ky., to—	Miles.	Rates in effect prior to 5 per cent increase. <i>Cents.</i>	Rates made by adding $2\frac{1}{2}$ cents to Cincinnati rates. <i>Cents.</i>
Rochester, N. Y.....	628	16.5	16.0
Albany, N. Y.....	857	21.5	21.7
Utica, N. Y.....	762	20.0	20.2
Syracuse, N. Y.....	708	18.0	17.5
Reading, Pa.	730	20.5	20.8
Harrisburg, Pa.	676	19.5	19.8
Baltimore, Md.	707	19.5	19.8
Philadelphia, Pa.	780	20.5	20.8
New York, N. Y.....	871	22.5	23.0
Boston, Mass.	1,059	24.5	25.0

We are of opinion and find that the rates on lumber in carloads from Cincinnati to western termini and points in trunk line territory should not exceed the rates as increased in consequence of our decision in the Five Per Cent case and the orders supplementary thereto.

Summary.

The respondents have not justified the proposed increased rates on yellow pine from the southwestern blanket to Thebes, Cairo, St. Louis, and East St. Louis, nor has the reasonableness of the
116 proposed southbound rates west of the Mississippi River been established. It has been shown that there are no transportation reasons for according lower rates to hardwoods than to yellow pine, and all the proposed increased rates on hardwood from west of the river which do not exceed the present rates on yellow pine will be permitted to take effect.

East of the Mississippi River we have permitted the respondents to increase their rates to north bank Ohio River crossings by not more than 1 cent in those instances in which such increases are necessary to effect a spread of 1 cent between the rates to opposite crossings, in accordance with our conclusions in the so-called Ohio River cases. In no case should the rates to north bank points be increased more than is necessary to make the rates to those points 1 cent higher than the rates to the opposite south bank points. For example, if the present spread is one-half cent the increase to the north bank point should not exceed one-half cent.

The record shows that cottonwood and gum are not entitled to lower rates than other kinds of hardwood, and the proposed rates on cottonwood and gum have been permitted in all cases in which they do not exceed the rates on other hardwoods. In no case should

the rates on cottonwood and gum, or the rates on other hardwoods, exceed the rates on yellow pine.

In order to give effect to our findings herein, and to avoid confusion, it will be necessary for the respondents to cancel all the tariffs now under suspension, and an order will be entered accordingly. Tariffs conforming to our findings herein may be filed to become effective on five days' notice to the public and the Commission.

Commissioner Harlan took no part in the decision of this case.

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Order.

At a General session of the Interstate Commerce Commission, held at Its Office in Washington, D. C., on the 12th Day of July, A. D. 1915.

Investigation and Suspension Docket No. 520.

Rates on Lumber From Southern Points to the Ohio River Crossings and Other Points.

It appearing. That on September 24 and October 27, 1914, the Interstate Commerce Commission entered upon a hearing concerning the propriety of the new individual and joint rates and charges, and new individual and joint regulations and practices affecting such rates and charges, stated in schedules contained in tariffs designated as follows: The Baltimore & Ohio Railroad Co.: Supp. No. 13 to I. C. C. No. 10838; supp. No. 14 to I. C. C. No. 10838; supp. No. 15 to I. C. C. No. 10838. The Chesapeake & Ohio Railway Co.: Supp. No. 7 to I. C. C. No. 5507; supp. No. 8 to I. C. C. No. 5507. The Chesapeake & Ohio Railway Co. of Indiana: Supp. No. 11 to I. C. C. No. 37; supp. No. 12 to I. C. C. No. 37. William J. Jackson and Edwin W. Winter, receivers Chicago & Eastern Illinois Railroad: Supps. No. 54, 56, and 57 to I. C. C. No. 2596. Chicago, Rock Island & Pacific Railway: I. C. C. No. C-9705. The Cincinnati, New Orleans & Texas Pacific Railway Company: Supp. No. 76 to I. C. C. No. 3040. The Cleveland, Cincinnati, Chicago & St. Louis Railway Co.: Supp. No. 11 to I. C. C. No. 6142. Detroit, Toledo & Ironton Railroad Co.: I. C. C. No. 10. Erie Railroad Company (lines Buffalo, Salamanca, N. Y., and west thereof): Supp. No. 39 to I. C. C. No. A-4430; supp. No. 18 to I. C. C. No. A-4599; supp. No. 16 to I. C. C. No. A-4734. Illinois Central Railroad Company: I. C. C. No. 4953. Illinois Central Railroad Company: The Yazoo & Mississippi Valley R. R. Co.: Supp. No. 34 to I. C. C. No. 3996; supp. No. 23 to I. C. C. No. 3997; supp. No. 38 to I. C. C. No. 3999; supp. No. 19 to I. C. C. No. 4418; supp. No. 5 to I. C. C. No. 4891; supp. No. 6 to I. C. C. No. 4891. Illinois Central Railroad Company (southern lines): The Yazoo & Mississippi Valley Railroad Company: Supp. No. 19 to I. C. C. No. 4281. International & Great Northern Railway Co.: Supp. No. 2 to I. C. C. No. 677. Kansas

City Southern Railway Co.: I. C. C. Nos. 3328, 3329, 3330, 118 3331, 3332. Louisiana Railway & Navigation Co.: Supp. No. 3 to I. C. C. No. A-472, I. C. C. No. A-586. Louisville & Nashville R. R. Co.: Supp. No. 16 to I. C. C. No. A-12174; I. C. C. Nos. A-13186, A-13187, A-13188; supp. No. 1 to I. C. C. No. A-13188. John Sculin, Jesse McDonald, and W. S. Holt, receivers Missouri & North Arkansas Railroad; I. C. C. No. 348. Missouri, Kansas & Texas Railway Co.: I. C. C. No. A-3995. The Missouri Pacific Railway Company, St. Louis, Iron Mountain & Southern Ry. Co.: I. C. C. No. A-2594, I. C. C. No. A-2596. Mobile & Ohio Railroad Co.: Supp. No. 28 to I. C. C. No. A-844; supp. No. 2 to I. C. C. No. A-1004. Morgan's Louisiana & Texas Railroad & Steamship Co., Louisiana Western Railroad Company, Iberia & Vermilion Railroad Company, Lake Charles & Northern Railroad Company: Supp. No. 5 to I. C. C. No. 2759-B; supp. No. 6 to I. C. C. No. 2759-B; supp. No. 5 to I. C. C. No. 2760-B. Nashville, Chattanooga & St. Louis Railway Rome & Northern Railroad: Supp. No. 11 to I. C. C. No. 2061-A, I. C. C. No. 2159-A; supp. No. 1 to I. C. C. No. 2159-A. New Orleans & Northeastern Railroad, Alabama & Vicksburg Railway: Supp. No. 37 to I. C. C. No. 2630; supp. No. 22 to I. C. C. No. 2709. New Orleans Great Northern Railroad Co.: Supp. No. 11 to I. C. C. No. 230; supp. No. 2 to I. C. C. No. 238; supp. No. 7 to I. C. C. No. 243. New Orleans, Mobile & Chicago Railroad Company, W. F. Owen, receiver: Supp. No. 12 to I. C. C. No. 568; supp. No. 2 to I. C. C. No. 739, I. C. C. No. 754. New Orleans, Texas & Mexico Railroad, J. D. O'Keefe, receiver: Supp. No. 8 to I. C. C. No. A-125; supp. No. 9 to I. C. C. No. A-125. Norfolk & Western Railway Co.: Supp. No. 20 to I. C. C. No. 4192; supp. No. 24 to I. C. C. No. 4293. Pennsylvania Company: Supp. 31 to Penna. Co., I. C. C. F 419; supp. 32 to Penna. Co., I. C. C. F 419; supp. 3 to I. C. C. F 459. The Pittsburgh, Cincinnati, Chicago & St. Louis Ry. Co.: Supp. No. 35 to P. C. C. & St. L. Ry., I. C. C. P 454; supp. No. 36 to P. C. & St. L. Ry., I. C. C. P 154; supp. 13 to I. C. C. P 497. St. Louis & San Francisco Railroad, James, W. Lusk, W. C. Nixon, W. B. Biddle, receivers: Supp. No. 32 to I. C. C. No. 6190; supp. No. 46 to I. C. C. No. 6427; supps. Nos. 9 and 10 to I. C. C. No. 6555. St. Louis Southwestern Railway Co.: I. C. C. Nos 3326, 3327. Southern Railway Company: I. C. C. No. A-6355; supps. Nos. 1 and 2 to I. C. C. No. A-6355. Southern Railway Company in Mississippi: Supps. Nos. 29 and 30 to I. C. C. No. 182. Tennessee Central Railroad Company, H. B. Chamberlain, W. K. McAlister, receivers: Supp. No. 12 to I. C. C. No. A-165. Texas & New Orleans Railroad: Supp. No. 27 to T. & N. O. R. R., I. C. C. No. 23. The Texas & Pacific Railway Co.: Supp. No. 15 to I. C. C. No. 2006; supp. No. 18 to I. C. C. No. 2008. Vicksburg Shreveport & Pacific Railway: Supps. Nos. 36 and 38 to I. C. C. No. 119 2679. Frank Anderson, agent: I. C. C. No. 7; supp. No. 34 to I. C. C. No. 9; supp. No. 29 to I. C. C. No. 10; supp. No. 33 to I. C. C. No. 12. E. H. Hinton, agent: Supp. No. 28 to I. C. C. No. A-40, I. C. C. No. A-87; supps. Nos. 1, 2, and 3 to I. C. C. No. A-87. Eugene Morris, agent: Supp. No. 28 to I. C. C. No. 281.

M. P. Washburn, agent: Supps. Nos. 22 and 23 to I. C. C. No. 103, I. C. C. No. 133;

It further appearing, That the operation of said schedules was subsequently suspended by appropriate orders until July 28, 1915;

It further appearing, That on January 13, 1915, the Commission entered upon an investigation concerning the propriety of the increases and the lawfulness of the rates, charges, regulations, and practices contained in Vicksburg, Shreveport & Pacific Railway supplement No. 43 to I. C. C. No. 2679, and subsequently ordered the operation of said supplement suspended until November 20, 1915;

It further appearing, That a full investigation of the matters and things involved has been had, and that the Commission, on the date hereof, has made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the carriers, respondent herein and designated in said tariffs, be, and they are hereby, notified and required to cancel, on or before July 27, 1915, the rates and charges stated in the schedules specified in said orders of suspension.

By the Commission.

[SEAL.]

GEORGE B. MCGINTY,

Secretary.

120 The certified copy of evidence before the Interstate Commerce Commission read on the hearing and referred to in the Order of Submission, is as follows:

Interstate Commerce Commission, Washington.

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the attached are true copies of the transcript of the stenographer's notes of the hearing held at Paducah, Ky., May 24, 1915, before Special Examiner LaRoe, in the case of Paducah Board of Trade against Illinois Central Railroad Company and others, Docket No. 7736, and of all Exhibits filed at this hearing, as a part of the testimony, the originals of which are now on file and of record in the office of this Commission.

In Testimony Whereof, I have hereunto subscribed my name, and affixed the seal of the Commission, this 21st day of March, 1916.

[Interstate Commerce Commission, 1887.]

GEORGE B. MCGINTY,

Secretary of the Interstate

Commerce Commission.

121 Before the Interstate Commerce Commission.

Docket. No. 7736.

PADUCAH BOARD OF TRADE, Complainant,
vs.
ILLINOIS CENTRAL RAILROAD COMPANY et al., Defendants.

PADUCAH, KENTUCKY, May 24th, 1915—10:00 A. M.

Before Wilbur LaRoe, Jr., Special Examiner.

Met pursuant to notice.

Appearances:

J. V. Norman, (Paul Jones Building, Louisville, Kentucky,) appearing for Complainant.

Charles Rixey, Jr., (Colorado Building, Washington, D. C.) appearing for Illinois Central Railroad Company.

Edw. A. Haid, and J. D. Watson, and A. G. Lehman (Railway Exchange Building, St. Louis, Missouri,) appearing for St. Louis Southwestern Railway Company.

122 Fred. G. Wright and C. C. P. Rausch, (#1114 Railway Exchange Building, St. Louis, Missouri,) appearing for Missouri Pacific Railway Company; St. Louis, Iron Mountain & Southern Railway Company; Natchez & Southern Railway Company; Texas & Pacific Railway Company; Morgan's Louisiana & Texas Railroad & Steamship Company.

J. E. Johanson, (Little Rock, Arkansas,) appearing for Chicago, Rock Island & Pacific, and Jacob M. Dickenson and W. N. Mudge, Receivers.

F. M. Ducker, (Cairo, Illinois) appearing for Cairo Association of Commerce and Cairo Lumber interest, Intervenors.

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Proceedings.

Examiner La Roe: Gentlemen, I will call Docket Number 7736, Paducah Board of Trade against Illinois Central Railroad Company, et al.

The defendants are so numerous that I will ask you to hand your appearances to the Reporter, and, in so doing, please do not hand in the appearances of any counsel who are not actually present.

I will make a brief statement of the case as I understand it, and I ask to be corrected if I do not state it as it is:

The complainant alleges that Paducah is a jobbing and manufacturing city and does a large business in buying, selling, re-handling and manufacturing lumber and lumber commodities; that its principal competitors are located at Cairo; that both Cairo and Paducah

obtain a large part of their supply of lumber from Louisiana and Arkansas, and that the rates maintained by defendants on lumber and on like commodities from this territory to Paducah are from two to six cents higher than the rates contemporaneously maintained to Cairo.

The complaint then refers to Docket Number 5897, which bears the same title as the present case, and which is reported in 29 I. C. C. page 583. In that case the Commission held that the short line distance from points West of the Mississippi on and South of the Memphis-Little Rock Line of the Rock Island are not greater to Paducah than to Cairo, and that the defendants should be required to establish from points or groups substantially equi-distant from both Paducah and Cairo rates to Paducah no higher than those to Cairo.

The report said that the Iron Mountain and the St. Louis Southwestern might handle the traffic through Cairo, if they so
124 desired, instead of routing it through Memphis.

No order was entered in that case, presumably because the complaint contained no prayer for the establishment of through routes and joint rates.

Complainant now alleges that the defendants have not complied with the Commission's finding in that case, and that the rates on logs and lumber from producing points in Arkansas and Louisiana west of the Mississippi River, and on and South of the Memphis-Little Rock Line of the Rock Island, including Des Arc, Arkansas, are unjust, unreasonable and discriminatory and give Cairo an undue advantage over Paducah.

The complainant now asks for the establishment of through routes and joint rates to Paducah via Memphis, the joint rates not to exceed the rates contemporaneously maintained to Cairo.

The Cairo Association of Commerce has intervened.

Is that a fair statement of the case, gentlemen?

Mr. Haid: I believe so.

Mr. Wright: Except as to one point, Mr. Examiner: The original petition, I believe, did allege that the rates were unreasonable, per se, but that was abandoned at the original hearing and no evidence was put in as to that.

Examiner LaRoe: Of course, we do not know as yet to what extent that allegation will be abandoned in the immediate case.

Mr. Wright: No sir.

Mr. Haid: Mr. Examiner, I would like to state on behalf of the Rock Island that in compliance with the opinion of the Commission in the former case, Docket Number 5897, the Rock Island has established through rates to Paducah.

Examiner LaRoe: They have been suspended, however, have they not?

125 Mr. Haid: Those rates have been suspended in I. & S.

Docket Number 520, and the question, whether or not those rates should stand has been fully treated and argued in that case.

The Rock Island would like now, in view of the present proceeding, which reopens the entire question, to withdraw the rates that are under suspension in that Docket to Paducah, Metropolis and

Brookport, so that the entire question can now be determined in one proceeding.

I might add, also, in answer to the Examiner's question, that I understand that there is in this case the Nashville, Chattanooga & St. Louis, which was not a party to the original case.

Examiner La Roe: Anything further?

Mr. Norman: If the Examiner please, in the interest of time, I desire to move that the record of the Commission in the former case of Paducah Board of Trade against the Illinois Central Railroad Company et al., Docket 5897, be read and considered as a part of the record in this case.

Examiner La Roe: You mean that it be stipulated into this record?

Mr. Norman: Yes; I think that will save a great deal of time, and anybody can offer anything in addition that they want to.

Examiner La Roe: In addition to that?

Mr. Haid: I understand, Mr. Examiner, that is contrary to the rules of the Commission; that a record cannot be stipulated into another case unless copies are filed with the Commission and served on the other parties. Inasmuch as I have no copy of the record in the former case, and am not familiar with that testimony, I would object to such a stipulation unless we are served with a copy of the record in the former case.

Examiner La Roe: Would you agree to that, Mr. Norman?

126 Mr. Norman: If the Examiner please, I have but one copy of the record in the other case.

Mr. Wright: I will ask Mr. Norman if that is the lumber case—there were two or three cases heard at that time.

Mr. Norman: Yes, sir; this is the lumber case.

Mr. Haid: I will say this: Mr. Rixey has kindly offered to lend me his copy, and with that I will withdraw my objection.

Examiner La Roe: And you will file, Mr. Norman, a copy of the transcript in that case in the record in this case?

Mr. Norman: I will file a transcript, yes sir.

Mr. Haid: I would like to add this, though: Mr. Rixey has not a copy of the Exhibits in the former case, and I would like to have those furnished. I presume you have them, Mr. Norman.

Mr. Norman: I think I have, but I am not sure I have them complete. There may be some that are not there. I would not like to guarantee that.

Mr. Haid: You will furnish what you have.

Mr. Norman: I will furnish what I have, yes.

Examiner La Roe: Proceed, Mr. Norman.

Mr. Norman: Mr. Craig.

C. W. CRAIG, was called as a witness, and, having been duly sworn, testified as follows:

Direct examination:

Mr. Norman: Mr. Craig, you are Secretary of the complain-t, the Paducah Board of Trade?

Mr. Craig: I am, yes sir.

Mr. Norman: How long have you been.

Mr. Craig: Three years, the first of next month.

Mr. Norman: Please give the geographical location of Paducah and Cairo.

127 Mr. Craig: Paducah is located on the Ohio and Tennessee Rivers, and four lines of the Illinois Central and the Burlington from the North and Nashville, Chattanooga & St. Louis from the south.

Mr. Norman: From the south bank of the Ohio River?

Mr. Craig: Yes sir; from the south bank of the Ohio River.

Cairo is on the north bank of the Ohio River, also on the Mississippi River, with the Illinois Central, Mobile & Ohio on the south, Cotton Belt and Iron Mountain from the west; Illinois Central and Big Four from the north.

Mr. Norman: What is the population of Paducah?

Mr. Craig: The 1910 census gives it 22,760.

Mr. Norman: What is the population of Cairo?

Mr. Craig: I am not familiar with that; about 15,000.

Mr. Norman: What plants—you need not name them all—but are there a number of plants located in Paducah engaged in the manufacture of lumber commodities?

Mr. Craig: Well, the Sherrill-Russell Lumber Company that manufacture doors, windows and that class of commodities. We have the Paducah Cooperage Company operating here that manufacture barrel material, barrel shooks, and Langstaf-Orm Manufacturing Company manufacturing doors, windows and frames.

Mr. Norman: A number of others.

Mr. Craig: We did have the Leigh Banana Case Company, but they left here sometime ago on account of being able to get their raw material into Cairo cheaper than they could get it into Paducah.

Mr. Norman: Did they move their plant to Cairo?

Mr. Craig: They moved to Cairo, yes sir.

Mr. Norman: Where does this raw material come from?

Mr. Craig: To which plant, Mr. Norman?

Mr. Norman: Lumber.

128 Mr. Craig: A great deal of the lumber comes to this city from West of the Mississippi River, Arkansas and Louisiana. The material for the Leigh Banana Case Company moved almost exclusively from Des Arc, Arkansas. The cooperage company were attempting to draw some material in from Arkansas but were unable to do much along that line.

Mr. Norman: How are the rates to Paducah constructed from this territory here involved?

Mr. Craig: Principally on Cairo combination.

Mr. Norman: What is the local rate from Cairo to Paducah?

Mr. Craig: Six cents.

Mr. Norman: I believe that is all.

Cross-examination:

Mr. Haid: Mr. Craig, what is your business, did you say?

Mr. Craig: Secretary of the Paducah Board of Trade.

Mr. Haid: As Secretary of the Paducah Board of Trade do you get any reports from the members of that Association on the amount of lumber received by those respective members.

Mr. Craig: No sir, I do not.

Mr. Haid: And the places at which they purchase the lumber.

Mr. Craig: Nothing only informally; going over the matter with them.

Mr. Haid: What percentage of the lumber used by the Paducah manufacturers is purchased west of the Mississippi River, and what percentage east of the Mississippi River?

Mr. Craig: I could not answer that question; they will have to answer that themselves.

Mr. Haid: Are the rates from the lumber producing territory east of the river to Paducah lower or higher than the rates from the Paducah territory west of the river?

Mr. Craig: From west of the river they are higher than they are from east of the river.

129 Examiner La Roe: You refer now to the yellow pine rates, do you not?

Mr. Haid: Yes sir.

— —: You were dealing entirely with yellow pine, were you not?

Mr. Craig: I was not, no sir.

Mr. Haid: You were dealing with hardwood also?

Mr. Craig: Hardwood and yellow pine.

Mr. Haid: In giving the answers you have just given, have you referred to yellow pine or to hardwoods?

Mr. Craig: To both.

Mr. Haid: And you could say that the rates on both yellow pine and on hardwood from the lumber producing territory East of the river are lower to Paducah than the rates from West of the river?

Mr. Craig: Yes sir.

Mr. Haid: And you do not know how much of the lumber, either hardwood or yellow pine, used at Cairo is purchased east or west of the river?

Mr. Craig: I do not.

Mr. Haid: How does the hardwood purchased west of the river move into Paducah? I want your knowledge of the actual movement of the lumber purchased west of the river.

Mr. Craig: Well, in most cases it moves through Memphis.

Mr. Haid: Moves through Memphis?

Mr. Craig: Yes sir; that is my understanding of the matter.

Mr. Haid: What kind of lumber is purchased at Des Arc?

Mr. Craig: It is veneer.

Mr. Haid: Veneer?

Mr. Craig: For the manufacture of banana crates principally.

Mr. Haid: How does that veneer move into Paducah from Des Arc?

130 Mr. Craig: Moved as lumber through Memphis, principally.

Mr. Haid: Through Memphis?

Mr. Craig: Yes sir; charged principally on Cairo combination; in some instances, higher.

Mr. Haid: By what line from Memphis?

Mr. Craig: Part of that movement by the Nashville, Chattanooga & St. Louis and also the Illinois Central; it was split.

Mr. Haid: Are the rates or were the rates at the time of that movement from Des Arc to Paducah lower or higher via Memphis than via Cairo?

Mr. Craig: They were higher via Memphis.

Mr. Haid: They were higher via Memphis than via Cairo?

Mr. Craig: But the Rock Island would deliver that at Memphis, and then I understand it was made on Cairo combination, part of it; some of it they charged on Memphis combination, but the correct rate there would be Cairo combination.

Mr. Haid: How could it move on the Cairo combination if it moved through Memphis and not through Cairo?

Mr. Craig: If the carriers for their convenience would move it through Memphis, I understand they would protect the Cairo combination.

Examiner La Roe: If they did protect the Cairo combination via Memphis, how could the rate via Memphis be higher than the rate via Cairo?

Mr. Craig: Well, in some cases they charged the Memphis combination. The Nashville, Chattanooga & St. Louis could not handle it through Cairo.

Mr. Haid: Are you personally familiar with the movement of that lumber or veneer from Des Arc to Paducah, and can you state whether or not those shipments were routed via the shipper or the consignee?

131 Mr. Craig: I am not. We can produce—Mr. Leigh can go on the stand on that.

Mr. Haid: Mr. who?

Mr. Craig: Mr. Lee.

Mr. Haid: Who is he?

Mr. Craig: He will be a witness in this case.

Mr. Haid: Is he connected with that Company?

Mr. Craig: He was. The Company has gone now; they have been forced to abandon this point.

Mr. Haid: What information have you as to whether or not the Memphis combination or the Cairo combination was charged on those shipments moving from Des Arc to Paducah via Memphis?

Mr. Craig: A number of expense bills were referred to me for adjustment in my office, and I personally saw that part of that moved by Nashville, Chattanooga & St. Louis taking Memphis combination. Others they would charge them on the basis of Cairo combination via Illinois Central.

Mr. Haid: Do you know whether or not where the routing was designated by Cairo the shipments moved over that route at the

lower rate, and where no routing was designated they moved via Memphis under the higher rate?

Mr. Craig: Where there was no routing designated, or if the shipment moved via Illinois Central, it could move on Cairo combination, because the rate to Cairo applied via Memphis, and then they could naturally bring the shipment on in here on the local rate.

Mr. Haid: Do you know whether or not any of those shipments were routed Rock Island, N. C. & St. L.?

Mr. Craig: I think so, yes sir. I am not positive on that.

132 Mr. Haid: But how would that rate compare with the rate in combination with the Illinois Central by either Memphis or Cairo?

Mr. Craig: Well, the shipments via Illinois Central, the Cairo combination on all that I say was protected, and in view of the fact there that the rate applied via Memphis on the Illinois Central into Cairo, and then the Cairo combination, would make it 17 cents, which was protected.

Mr. Haid: At what other points do the Paducah manufacturers purchase lumber west of the Mississippi River?

Mr. Craig: I cannot—there is some little comes here from Baham, Louisiana.

Mr. Haid: How does that move?

Mr. Craig: Via Memphis, I think; I am not sure.

Mr. Haid: Does that move east or west of the river.

Mr. Craig: Mr. Sherrill will be introduced as a witness here and he can answer that question better than I can.

Mr. Norman: That point is east of the river?

Mr. Haid: The point you refer to there is east of the river.

Mr. Craig: Some moves in here from west of the river, but Mr. Sherrill can tell you that better than I can.

Mr. Haid: All the information you have with reference to the rates involved herein is information given you by other parties, is it not?

Mr. Craig: It is; and in a number of cases they have referred their expense bills to me for any corrections that might be on them, and I have gotten the information from them.

Mr. Haid: Have you any of those expense bills here?

Mr. Craig: No; they were returned to the shippers.

Mr. Haid: So that your testimony is based entirely upon your recollection of what those expense bills showed?

133 Mr. Craig: It is, yes sir.

Mr. Haid: What lines did you say serve Paducah?

Mr. Craig: The Burlington pull- freight in here; the Illinois Central from four directions, and the Nashville, Chattanooga & St. Louis from the south.

Mr. Haid: What lines reach Paducah from the lumber producing territory west of the Mississippi River?

Mr. Craig: None.

Mr. Haid: What lines reach Paducah from the lumber producing territory east of the Mississippi River?

Mr. Craig: Illinois Central.

Mr. Haid: Does the Illinois Central reach Paducah from the lumber producing territory east of the river?

Mr. Craig: Yes.

Mr. Haid: It does?

Mr. Craig: Yes.

Mr. Haid: Via what routes?

Mr. Craig: Via Fulton. It is the main line.

Mr. Haid: And what other line from the southeast?

Mr. Craig: The Nashville, Chattanooga & St. Louis operate in here from the southeast.

Mr. Haid: Have they a direct line into the lumber producing territory?

Mr. Craig: Not in the Mississippi Valley, no sir.

Mr. Haid: And the other two lines referred to by you, the Burlington and the Illinois Central, are the only lines radiating from Paducah to the consuming territory?

Mr. Craig: Yes sir.

Mr. Haid: And they both reach the same consuming territory, do they not?

134 Mr. Craig: They do.

Mr. Haid: In other words, they both serve Illinois.

Mr. Craig: Yes sir.

Mr. Wright: Were you present at the hearing of the other lumber case?

Mr. Craig: Yes sir.

Mr. Wright: Did you hear the testimony of the gentleman who testified that he ordered his shipments routed via the Nashville, Chattanooga & St. Louis east of Memphis, and that he knew that the rate via that route was two cents higher than the Cairo route?

Mr. Craig: I did. The Nashville, Chattanooga & St. Louis—to answer that—the Nashville, Chattanooga & St. Louis were endeavoring to get the same rate established to Paducah that was in effect to Cairo, and they had promised the shippers here that they would ask the Commission to allow them to refund on the basis of the through rate that was established.

Examiner La Roe: Is it not the Commission's policy to do that, though,—is it?

Mr. Wright: And no such evidence was introduced in the original hearing. I think that is all I care to ask.

Examiner La Roe: That is all.

Mr. Ducker: Mr. Craig, can you state the kinds of lumber that are used here in Paducah?

Mr. Craig: In Paducah?

Mr. Ducker: Yes sir; that is as to whether it is yellow pine.

Mr. Craig: Well, we use yellow pine, hardwood, gum.

Mr. Ducker: Do you know the approximate consumption of yellow pine in Paducah?

Mr. Craig: I do not.

135 Mr. Ducker: Do you know whether it is all lumber in the rough, or is it the manufactured product, or partially manufactured product?

Mr. Craig: I could not make that statement. There are very few logs brought in here from the yellow pine district; principally lumber.

Mr. Ducker: Do you know, or have you any information, Mr. Craig, as to the volume or the production of hardwood lumber in the States of Arkansas and Louisiana, as compared with the production in Tennessee and Kentucky?

Mr. Craig: I have not.

Mr. Ducker: On page 3, Paragraph two of your complaint, the original petition, Mr. Craig, you state that the principal competitors of the lumber merchants and manufacturers at Paducah are located at Cairo.

Mr. Craig: Well, a great many of our people have been forced to operate yards in Cairo because they could not operate here with the through rate; they have had to go to Cairo with their yards, and a great many of them have lived in Paducah.

Mr. Ducker: Who are some of them?

Mr. Craig: Take Faust Lumber Company, they operate in Cairo.

Mr. Ducker: Are they there now?

Mr. Craig: I cannot state that.

Mr. Ducker: You do not know, then, that the majority of the business of the Faust Brothers Lumber Company is reconsigned business at Cairo, and not Cairo proper?

Mr. Craig: Faust has left here entirely; he became disgusted with this last case and did not think we were going to get it through and he left Paducah.

Mr. Ducker: So you do not believe, or do you believe, that Memphis or East St. Louis, or St. Louis or Nashville, Tennessee, 136 has as much bearing on the competition so far as Paducah is concerned as compared with Cairo?

Mr. Craig: There is competition there, to be sure, but our local people have been forced to do business in Cairo because it was closer for them to operate.

Mr. Ducker: Do you not believe the competition, so far as hardwood or yellow pine lumber is concerned, is general—it cannot be confined to any particular points, can it?

Mr. Craig: Certainly not.

Mr. Ducker: You would have just as much competition at Nashville or Evansville on hardwood brought from east of the Mississippi as you would at Cairo, would you not?

Mr. Craig: Well, I do not think so.

Mr. Ducker: You do not think so?

Mr. Craig: That is my impression about it.

Mr. Ducker: With your knowledge of rates, say, for instance, the Cincinnati merchant or the Cincinnati lumber man, he reaches Central Freight Association territory on a shorter rate than Paducah does, does he not?

Mr. Craig: Yes sir.

Mr. Ducker: Would that make competition?

Mr. Craig: The combination through Cincinnati and through

Paducah to that territory would not permit Paducah to do business there.

Mr. Ducker: What I am getting at, you experience the same competition at Cincinnati, Louisville and Evansville as much as you do Cairo, do you not?

Mr. Craig: The lumberman can answer that much better than I can, who will succeed me on the stand.

Mr. Ducker: That is all.

(Witness excused.)

137 J. H. RAMSEY was called as a witness, and, having been duly sworn, testified as follows:

Direct examination:

Mr. Norman: If the Examiner please, the appearances were not announced. I would like to know whether the Cairo Board of Commerce was represented.

Mr. Ducker: Yes; F. M. Ducker for the Cairo Association of Commerce.

Mr. Norman: Mr. Ramsey, you are engaged in freight auditing work and preparing statistics for hearings before the various Commissions, are you not?

Mr. Ramsey: I am.

Mr. Norman: If the Examiner please, his experience and so forth is established in the record which is going to be filed in the case, so I do not suppose it is necessary to go into that.

You testified in the case of the Paducah Board of Trade against the Illinois Central Railroad Company, Docket No. 5897, did you not?

Mr. Ramsey: Is that the former hearing, Mr. Norman?

Mr. Norman: Yes sir.

Mr. Ramsey: No sir; Mr. Ward, who was in my employ, testified in that case.

Mr. Norman: Mr. Ramsey, what are the distances from territory west of the Mississippi River, and on and south of the Rock Island to Paducah and Cairo respectively?

Mr. Haid: Mr. Examiner, inasmuch as Mr. Ramsey has now stated he did not testify in the former case, I would suggest he be qualified before he answers counsel's question.

Mr. Norman: What experience have you had, Mr. Ramsey, in rate matters?

Mr. Ramsey: I started my experience in 1883 with the
138 Monon railroad at Louisville; continued with them until 1886.

Mr. Haid: In what capacity?

Mr. Ramsey: As an office boy. In 1886 I went with the Louisville & Nashville as a rate clerk in the office of Mr. H. F. Smith, then General Freight Agent of the Short Line Division of the Louisville & Nashville Railroad. I continued there until 1888.

Since 1888 it would consume quite a good deal of time to tell you

the exact dates. In fact, I do not think I could give you the exact dates of my employment in the different roads, but I have served the Louisville & Nashville for about 14 years off and on, the old C. O. & S. W., now a part of the Illinois Central Railroad, three years; the Mobile & Ohio, the Southern Railway, the Alabama Great Southern; the Missouri, Kansas & Texas, and my last employment was from 1906 to 1909 with M. P. Washburn, Agent of the Southeastern Associated lines, what is called the Southeastern Mississippi Valley Association. In 1909 I severed my connection with the Southeastern Mississippi Valley Association and went into this line of work that I have just testified to, the auditing of freight accounts, the preparation of data and complaints before this Commission and other State Commissions.

Mr. Haid: Can you give us briefly, Mr. Ramsey, the capacities in which you have served these various railroads since 1886?

Mr. Ramsey: Principally as a rate clerk.

Mr. Haid: Your duties consisted of what, as Rate Clerk?

Mr. Ramsey: The quotations of rates, part of the time signing the rates and bills of lading, contracts of the railroad companies. The last three years of my experience taking from the Association records, proceedings of the Association, and compiling tariffs based on the Association procedure.

Mr. Norman: Mr. Ramsey, how much shorter is the distance from the territory here involved, which is that territory west of the Mississippi River, and on and south of the Rock Island, to Paducah via Memphis, than to Paducah via Cairo?

Mr. Ramsey: From 40 to 60 miles.

Mr. Wright: I am going to object to that as being too general altogether. It should be confined to certain points, typical points, illustrating the situation.

Examiner La Roe: I do not see any objection to the question. The average distance can well be stated.

Mr. Wright: He has not stated the average distance; he says the distance. That contemplates every point in that territory.

Mr. Norman: He said approximately 40 to 60 miles.

Mr. Haid: We will show it varies.

Mr. Norman: What is your authority for that?

Mr. Ramsey: My authority for the assertion is the opinion of the Commission itself in the other case. The Commission states the distance is from 40 to 60 miles and I will leave it to the Commission. They probably investigated that.

Mr. Norman: Mr. Ramsey, what rivers have to be crossed to reach Paducah from that territory by Cairo?

Mr. Ramsey: In reaching Paducah via Cairo, the Mississippi and the Ohio must be crossed.

Mr. Norman: What rivers must be crossed in reaching Paducah via Memphis?

Mr. Ramsey: The Mississippi River only.

Mr. Norman: Have you a table giving the distances from various points in Arkansas and Louisiana to Cairo and Paducah by the west side lines and by Memphis?

Mr. Ramsey: I have.

Mr. Norman: I will ask you to file it.

Mr. Ramsey: I desire to file same as part of my testimony, marked "Ramsey number 1."

140 (The statement in question, consisting of one sheet, so offered and identified, was received in evidence and thereupon marked Complainant's Exhibit Number 1, Witness Ramsey, received in evidence May 24th, 1915, and is attached hereto.)

Mr. Wright: Have you extra copies of that?

Mr. Ramsey: I will furnish them to you.

Mr. Wright: I would like that now, during the hearing.

Examiner La Roe: I will let you have one of the Commission's copies.

Mr. Norman: Mr. Ramsey, how are the rates from this territory generally constructed to Paducah?

Mr. Ramsey: They are usually constructed on basis of combination, either Memphis or Cairo.

Mr. Norman: Which ever is the lower?

Mr. Ramsey: Which ever is the lower.

Mr. Norman: When constructed on Cairo combination, they are 6 cents in excess of the Cairo rate?

Mr. Ramsey: Yes sir.

Mr. Norman: And the local rate from Cairo to Paducah being 6 cents?

Mr. Ramsey: Yes sir.

Mr. Norman: Now take the point Des Arc, Arkansas—what railroad is it on?

Mr. Ramsey: To my recollection, it is on the C. R. I. & P. road, a local point.

Mr. Norman: Known as the Rock Island?

Mr. Ramsey: Known as the Rock Island, yes sir.

Mr. Norman: How does traffic from that point move to either Cairo or Paducah?

Mr. Ramsey: It would naturally move through Memphis.

141 Mr. Norman: Rock Island to Memphis and Illinois Central to destination?

Mr. Ramsey: Rock Island to Memphis and Illinois Central, yes sir.

Examiner La Roe: Do I understand the witness to say traffic always moves that way?

Mr. Norman: He said it was usually moved through Memphis.

Mr. Ramsey: Naturally moved.

Mr. Haid: From Des Arc?

Mr. Norman: From Des Arc, and the traffic moving on the Rock Island would naturally move that way, would it not?

Mr. Ramsey: It would, yes.

Examiner La Roe: When you say naturally, you mean that would give the Rock Island the long haul?

Mr. Norman: The long haul.

Mr. Ramsey: Yes sir.

Mr. Norman: And that is true, of course, of all traffic originating on the feeders of the Rock Island?

Mr. Ramsey: It is.

Mr. Norman: I believe you may ask him.

Cross-examination:

Mr. Haid: Mr. Ramsey, referring to your Exhibit Number 1, how did you figure the distance from Forest City, Arkansas, to Cairo and to Paducah respectively?

Mr. Ramsey: Those distances I think you will find in the opinion of the Commission in a former case. I think if you have the record there of that former case you will find that that exhibit is—

Examiner La Roe: Did you not compile this exhibit yourself?

Mr. Ramsey: No sir; it is taken right from the Commission's record—that is, from its decision in the former case.

Mr. Haid: Did you check any of these distances, taking the first point, for instance, Forest City, to ascertain whether that was the distance via the Rock Island in connection with some other line to Cairo, or via the Iron Mountain to Cairo?

Mr. Ramsey: No sir, I did not.

Mr. Haid: Did you check to ascertain whether the distance to Paducah is figured via the Rock Island and Illinois Central through Memphis or via the Rock Island and Nashville, Chattanooga & St. Louis through Memphis?

Mr. Ramsey: No sir.

Mr. Haid: Or whether it was figured through Memphis?

Mr. Ramsey: I did not check any of those mileages at all; simply took them from the figures in the other case; took them from the Commission's figures.

Mr. Haid: So that you know absolutely nothing about what is contained in this Exhibit?

Mr. Ramsey: No sir.

Mr. Haid: Do you know in what manner the Commission arrived at the figures which you say are contained in this report?

Mr. Ramsey: I think that the Commission obtained those figures in the former case as prepared by Mr. Ward. However, I am not positive of that.

Mr. Haid: Now, you stated that the short line to Paducah from all feeders of the Rock Island would be via the Rock Island through Memphis, did you not?

Mr. Ramsey: I said that was a natural route; I did not say it was the short line mileage, I think. I think Mr. Norman asked the question—

Mr. Haid: Do you not know that practically all of the feeders of the Rock Island are also feeders of either the Iron Mountain or the Cotton Belt?

Mr. Ramsey: No sir, I do not know that.

Mr. Haid: Do you know whether that is a fact or not?

Mr. Ramsey: I do not.

Mr. Wright: Mr. Ramsey, do you consider this Exhibit Number

1 as representative of the lumber producing section of the Southwest—the points you have taken?

Mr. Ramsey: No sir; I could not say a word about that, as to whether it was representative or not. It is simply typical, probably, of that lumber producing section.

Mr. Wright: Is it not a fact that the main yellow pine producing territory is South of Alexandria, and I note that Alexandria is the farthest point South on your Exhibit?

Mr. Ramsey: Yes sir, it probably is, but as I understand it, this proceeding covers hardwoods, and in fact I do not know but it probably will be testified to by men in the lumber business here, there is probably more of the other grades of hardwoods interested than yellow pine.

Mr. Wright: Is it not a fact that practically all of the first points shown on the Exhibit are in northern Arkansas and points where the timber has in the main been cut off?

Mr. Ramsey: I could not state that.

Mr. Wright: Except small patches?

Mr. Ramsey: I could not state that.

Mr. Wright: In connection with this Exhibit, Mr. Examiner, I want to make objection to its introduction inasmuch as the mileages are incorrect. That will be developed later in our testimony, and I want, in connection with his introduction of it, to call attention to that.

Examiner La Roe: We will admit it, and if it is not correct,
144 you can correct it.

Mr. Norman: That is not a ground of objection to its introduction.

Mr. Wright: Well, I will withdraw the objection. I want to call the attention of the Commission to its incorrectness.

That is all I have.

(Witness excused.)

Mr. Norman: There are two shippers we want to put on the stand, and they are both reported to be on the way here, but neither of them is here, and, if agreeable to the defendants, they may proceed and we will put those gentlemen on later.

Examiner La Roe: In other words, you have no further witnesses that are present?

Mr. Norman: That are present, no sir.

Examiner La Roe: And you are willing for the defendants to go on now?

Mr. Norman: Yes sir.

Mr. Haid: I assume, Mr. Examiner, it is proper for the intervenors to follow the defendants.

Examiner La Roe: The intervenors are intervening on behalf of the defendants, are they not?

Mr. Haid: Not that I know of; they are looking out for their own interests.

Examiner La Roe: Are you ready to go on, Mr. Ducker?

Mr. Ducker: No, I am not. I would rather wait until later.

Examiner La Roe: Well, you gentlemen will have to decide for yourselves who is next.

Mr. Haid: Mr. Examiner, I understand these witnesses are in town—it is simply a question of giving them time to get
145 here from their offices.

Examiner La Roe: You mean the complainant's witnesses?

Mr. Haid: Yes sir. I suggest we take a short recess.

Examiner La Roe: I think that would be better than for the defendants to go ahead now.

(At this point a recess was taken).

C. R. SHERRILL was called as a witness, and, having been duly sworn, testified as follows:

Direct examination:

Mr. Norman: You live in Paducah, Mr. Sherrill?

Mr. Sherrill: Yes sir.

Mr. Norman: What business are you in?

Mr. Sherrill: In the lumber business.

Mr. Norman: What is the name of your firm or corporation?

Mr. Sherrill: I am interested in two companies here, the Sherrill-Russell Lumber Company and the Sherrill-King Mill and Lumber Company.

Mr. Norman: Where do you draw your supply of lumber from, Mr. Sherrill?

Mr. Sherrill: The Sherrill-Russell Lumber Company draws its supply of yellow pine lumber from the States south of us.

Mr. Norman: Well, with reference to the Mississippi River, east or west?

Mr. Sherrill: We buy some stock east of the river and some west of the river; the bulk of it, however, comes from the east of the river—has been.

Mr. Norman: What is the best lumber territory of the two, east of the river or west of the river?

Mr. Sherrill: When you say——

146 Mr. Norman: That is, the territory having the largest production?

Mr. Sherrill: Why, it is generally conceded there is more lumber produced west of the river than there is east of the river, of yellow pine.

Mr. Norman: Do you know how the State of Louisiana ranks as a lumber producing State in the United States?

Mr. Sherrill: Yes, it ranks second or third. I am not positive, but it might take second place.

Mr. Norman: How do your rates from west of the river compare with the rates to Cairo from west of the river? We will take first that territory from which the lumber moves by the Southern crossings, crossings South of Memphis.

Mr. Sherrill: The rate of freight applying at present from Brook-

haven, Mississippi, which is a point east of the river, is 16 cents to Paducah, 14 cents to Cairo.

Mr. Norman: Now, these points east of the river are not involved here, Mr. Sherrill. Take points west of the river.

Mr. Sherrill: Windfield, Louisiana, is a point west of the river. The rate to Paducah is 18 cents, to Cairo 16 cents.

Mr. Norman: Do you know how traffic from that point moves—what is the routing?

Mr. Sherrill: I am not positive about the routing from Winfield, Louisiana, but I am positive about the routing from Shreveport and Colfax, Louisiana, which points take an 18-cent rate to Paducah and a 16-cent rate to Cairo. The shipments that are moving from the points last named, especially Colfax, Louisiana, move to Shreveport, Louisiana, on the Louisiana Railway & Navigation cars of the Vicksburg, Shreveport and Pacific to Vicksburg, and from Vicksburg to Jackson, Mississippi, care of the Illinois Central.

147 Examiner: Are you sure that goes via New Orleans?

Mr. Sherrill: I did not mention New Orleans, no sir. These shipments I have received have not moved by way of New Orleans, from those points that I have named.

Mr. Norman: Where have they crossed the Mississippi River?

Mr. Sherrill: Principally at Vicksburg, Mississippi.

Mr. Norman: Now, from points farther north and west of the Mississippi River, where the movement to Paducah is either through Cairo or through Memphis, how do you stand with reference to that territory? Can you get into that territory?

Mr. Sherrill: Give me that question again, please.

Mr. Norman: From points farther North, where the movement is across the river at either Memphis or Cairo, can you get into that territory? Will your rate permit you to buy lumber in that territory?

Mr. Sherrill: Our Paducah rates?

Mr. Norman: Yes; points on the Rock Island.

Mr. Sherrill: Well, that would not be the points farther north. The mills that are located on the Iron Mountain and the Cotton Belt, we have been thus far unable to buy from for the reason that their rates are not near as favorable as those that I have named from Colfax and Shreveport to Paducah.

Mr. Norman: How about points on the Rock Island?

Mr. Sherrill: I am not acquainted with the mills on that line.

Mr. Norman: Now you say the rate from Colfax, I believe, was 18 cents to Paducah—is that the result of a recent reduction?

Mr. Sherrill: No, not recent; I think that rate was named either the latter part of 1910 or the early part of 1911, that particular rate.

148 Mr. Norman: Do you know what it formerly was?

Mr. Sherrill: 22 cents, I think. That permitted movement through Cairo.

Mr. Norman: What is your authority for the rates that you have quoted?

Mr. Sherrill: Joseph Hattendorf, General Freight Agent of the Illinois Central, Memphis, Tennessee, under date of April 13th, 1915.

Mr. Norman: He quoted those rates?

Mr. Sherrill: Yes sir.

Mr. Norman: Suppose you read the rates he quoted to Paducah and Cairo from a number of those points as to which you asked him.

Mr. Sherrill: Have you reference to points west of the river or east of the river?

Mr. Norman: West of the river.

Mr. Sherrill: Well, Winfield, Louisiana, to Paducah, 18 cents; Cairo, 16 cents; Shreveport, Colfax, Alexandria, Louisiana, the same.

Mr. Norman: By the same you mean 18 cents to Paducah and 16 cents to Cairo?

Mr. Sherrill: 18 cents to Paducah and 16 cents to Cairo.

Mr. Norman: I believe you may ask him.

Cross-examination:

Mr. Haid: Mr. Sherrill, how much of your yellow pine is purchased west of the Mississippi River? The yellow pine that your companies use?

Mr. Sherrill: For the past six months, perhaps, I could say with safety about one-third.

Mr. Haid: And how much prior to that?

149 Mr. Sherrill: Well, not exceeding 15 per cent.

Mr. Haid: Why are you purchasing more west of the river now than formerly?

Mr. Sherrill: Some of the largest and best manufacturers of yellow pine lumber are mills that are controlled by the Chicago Lumber & Coal Company and the Long-Bell Lumber Company, and they were within this time able to quote us a rare of 16 cents from points Fullerton, Louisiana; De Ridder, Louisiana; Bon Ami, Louisiana; Lake Charles, Louisiana; Woodworth, Louisiana; Long Bell, Louisiana.

Mr. Haid: You say they were able to quote you these rates, 16 cents?

Mr. Sherrill: They were able to quote me lumber based on those rates.

Mr. Haid: Where, on the Cotton Belt or the Iron Mountain, have you attempted to purchase yellow pine lumber and have been unsuccessful?

Mr. Sherrill: Well, Ball, Louisiana, one point.

Mr. Haid: How is that spelled?

Mr. Sherrill: Where the Ball Lumber Company is located. Now I won't say positively that the station is Ball; the Ball Lumber Company.

Mr. Haid: What line is that located on?

Mr. Sherrill: It is on the Iron Mountain.

Mr. Haid: Why were you unable to purchase lumber from them?

Mr. Sherrill: Their rate of freight would not permit them to quote

us as attractive a price as the mills that were located on a better rate of freight to Paducah.

Mr. Haid: Where else on the Iron Mountain or Cotton Belt have you endeavored to purchase lumber and found that you could not?

150 Mr. Sherrill: I cannot recall the points. If I had an opportunity to refer to my files, however, I could produce, if necessary, correspondence on that subject.

Mr. Haid: In what manner have you suffered by reason of your inability to purchase from the Ball Lumber Company at Ball, Louisiana?

Mr. Sherrill: I cannot say that my companies have suffered materially from this reason, other than when there are a number of points with the same rate of freight applying to the destination that we wanted to reach, it gave us an opportunity to inquire of more mills. Sometimes the mills are loaded with orders and are unable to perhaps quote as attractive a price as they might otherwise quote. It opens a larger field for us to investigate and learn of their ability to quote.

Mr. Haid: Have you not at all times been able to purchase whatever lumber you desired from points west of the Mississippi River at the same price that you purchased east of the Mississippi River? In other words, have you not always been able to purchase from the Long-Bell Lumber Company or the Chicago Lumber & Coal Company all of the lumber that you required, based on a 16-cent rate?

Mr. Sherrill: You are perhaps aware of the fact that a 16-cent rate has not always been applying from the companies you have named mills.

Mr. Haid: I am aware of the fact, Mr. Sherrill, that the 16-cent rate is not published as a freight rate from any of those points to Paducah, but I am also aware, as you have stated, that those mills west of the Mississippi River do make their sales based on the 16-cent rate, and I want you to verify it, and if it is not correct, say when and there you have required lumber from West of the Mississippi River that you could not purchase, based on a 16-cent rate.

Mr. Sherrill: May I ask that that question be read again?

(Question read by the Reporter.)

151 Mr. Sherrill: We have been buying lumber more or less from the Chicago Lumber & Coal Company for several years, and so far as I can recall, until recently, they never shipped us a car of lumber from their mills west of the river. They either owned or controlled the product of mills east of the river from which mills they shipped our orders. Thus far, I have been unable to buy lumber from the Long-Bell Lumber Company because of the fact that their mills were located west of the river and they would not compete with prices quoted on a lower rate of freight from mills east of the river. Recently, in fact in April, the Long-Bell Lumber Company's representative was in my office soliciting business for the first time in many years, and I asked him why he solicited my business. His reply was, that they had a 16-cent rate of freight applying on yellow pine lumber from their mills located at De Ridder, Bon Ami, Lake

Charles, Woodworth and Long Bell, Louisiana, which rate had been recently accorded them.

Examiner La Roe: A 16-cent rate to Paducah has recently been accorded them?

Mr. Sherrill: Yes sir; that is their advice by their representative, and I took pains to take that up with Mr. J. T. Donovan, the Agent of the Illinois Central at this place, and asked him to have it confirmed. He did confirm it—not by letter, but by telephone.

Examiner La Roe: Those points are located on the Kansas City Southern, are they not?

Mr. Sherrill: I am not positive, but I think that is so.

Mr. Haid: They are not all located on the Kansas City Southern, are they?

Mr. Sherrill: I could not tell you positively what line of railroad they are located on.

Mr. Haid: Woodward is located on a so-called tap line, is it not?

152 Mr. Sherrill: I could not answer you, sir. All I know is, they are willing to put lumber in there on a 16-cent rate of freight, and I am advised by the Illinois Central officials that that is the rate applying from those points, and I am now trying to line myself up with the Long-Bell people so that I can buy lumber from them, in view of that fact.

Mr. Haid: Does it make any difference to you whether the Chicago Lumber & Coal Company ship the lumber purchased by you from mills east of the river or west of the river?

Mr. Sherrill: To answer that question intelligently I fear I would have to go into details too much, but I will say Yes. In certain characters of material we specify that we want long leaf yellow pine or short leaf yellow pine, and even in those two respective kinds of yellow pine there is coarser grain material in different sections than there is in other sections. If it is a soft quality of interior finish lumber that we desire, why, perhaps we would ask them to ship it from a certain mill where I am personally acquainted with the character of their product. If it is heavy construction timbers that I am requiring, perhaps I might ask them to ship it from another mill. But not necessarily should that be considered to mean there are not mills east of the river than can produce just as good a quality of lumber as there are mills west of the river.

Mr. Haid: Then, your complaint is, that there are certain mills west of the river that you are acquainted with which you have purchased a better grade of timber from than the mills east of the river that you are acquainted with, and when you want that particular grade then you want to go to the particular mill west of the river that you know handles that grade, is that it?

Mr. Sherrill: The advantage to be obtained in having a wider territory to draw our supply from is this: A mill, as a rule, bases its prices on the condition of its order book. If they have a
153 large number of orders of the character of material for which you were inquiring, then perhaps they might not quote as attractive a price as they would if they were soliciting orders in that line and needed them. Sometimes, for a reason that I am not able

to explain, the mills east of the river are better prepared to handle a certain character of order than mills west of the river. Why it operates that way I cannot understand and cannot explain to your satisfaction, but I know it is a fact.

Mr. Haid: Then, what you want is a parity of rates from mills east and west of the river?

Mr. Sherrill: Considering one branch of my business, and viewing it strictly from a local competitive standpoint—and when I say local, I mean that competition that we would have to meet within a certain radius of a number of miles, and I refer to housebuilding material, construction material, then I would answer your question and say that the larger the territory from which we can draw our supplies that has the same rate of freight applying, the more advantageous it is to us. But when I consider your inquiry from the standpoint of being interested in a mill that is operating at Colfax, Louisiana, from which I draw more or less of my supplies that are needed for my local mills, I would say that we certainly feel like we are entitled to, and should have, as low a rate of freight from that mill to Paducah as applied from that mill to Cairo, Illinois.

Examiner La Roe: What proportion of the material that your two companies use is yellow pine?

Mr. Sherrill: The Sherrill-Russell Lumber Company use about 90 per cent yellow pine.

Examiner La Roe: Most of it is obtained east of the river?

Mr. Sherrill: Has been, yes sir.

Examiner La Roe: And the other Company?

Mr. Sherrill: The Sherrill-King Mill & Lumber Company
154 are a saw mill company that manufactures all of their product from logs.

Examiner La Roe: Well, what proportion of theirs is yellow pine?

Mr. Sherrill: Not exceeding 2 per cent, and that is accumulated by virtue of the fact that we occasionally ship logs from the northern part of Mississippi to Paducah and get more or less pine timbers in rafts of logs that we buy from the river.

Examiner La Roe: So that that Company consumes hardwood lumber almost exclusively?

Mr. Sherrill: The Company manufactures hardwood lumber almost exclusively.

Examiner La Roe: Where does it come from?

Mr. Sherrill: It is manufactured from logs, timber that comes from territory ranging perhaps 200 or 250 miles.

Examiner La Roe: Most of it comes from east of the river?

Mr. Sherrill: All of it comes from east of the river.

Mr. Haid: You do not purchase any of your hardwood west of the Mississippi River?

Mr. Sherrill: Yes; the Colfax Hardwood Lumber Company operates a hardwood mill and the Sherrill-Russell Lumber Company buys more or less hardwood lumber from that mill; in fact, quite a good deal. If I may explain, the Sherrill-King Mill & Lumber Company operates a saw mill and sell only at wholesale. The Sherrill-Russell Lumber Company operates planing mills and sell practically alto-

gether at retail. Consequently, they do not manufacture any of their lumber; they must buy it from other mills, and, naturally, they give their own mills, or the mills that their stockholders are interested in, a preference in the business; but neither of my saw mill plants manufactures yellow pine.

Mr. Haid: Then what of your hardwood do you purchase
155 from mills west of the river, rather than from your own Company?

Mr. Sherrill: Not exceeding 25 per cent.

Mr. Haid: I mean what character of hardwood?

Mr. Sherrill: Oak, cypress, some gum,—a very small per cent of gum.

Mr. Haid: Why do you purchase that west of the river rather than from your own Company?

Mr. Sherrill: The stock of hardwood with the two companies varies from time to time. As an illustration, I am today in the market for cypress lumber, the specific kind that I have not on my local saw mill yard. I therefore must either buy that from my Colfax, Louisiana, plant or from some other mill that manufactures cypress lumber. The thickness and quality must be taken care of, and our demand from time to time, and if our own mills do not have this stock, we must buy from the others.

Examiner La Roe: Let me see if I get this straight, Mr. Sherrill: Your saw mill company deals almost exclusively with hardwoods?

Mr. Sherrill: Yes sir.

Examiner La Roe: They obtain it almost exclusively east of the Mississippi River?

Mr. Sherrill: No; the Sherrill-King Mill & Lumber Company are located here in Paducah.

Examiner La Roe: Where is your saw mill company located?

Mr. Sherrill: That is the saw mill company. The Sherrill-King Mill & Lumber Company owns and operates a saw mill here in Paducah.

Examiner La Roe: Both of your companies are located here in Paducah, are they not?

Mr. Sherrill: Just a moment. It manufactures hardwood lumber from logs it secures in a radius of, say, 250 miles of Paducah.
156 Then the Sherrill-Russell Lumber Company is an independent corporation that deals in all kinds of construction material, such as windows, doors, sash, finished material, stairways, etc.

Examiner La Roe: Where is that located?

Mr. Sherrill: That is located in Paducah, Kentucky.

Examiner La Roe: In other words, both of those companies are located in Paducah, Kentucky?

Mr. Sherrill: Both of those companies are located at Paducah, Kentucky, and within 2 miles of each other. They are not together, you see. Then I have a company at Colfax, Louisiana, operating under the firm name of the Colfax Hardwood Lumber Company.

Examiner La Roe: That is a saw mill company, is it?

Mr. Sherrill: That is a saw mill company and manufactures and sells at wholesale exclusively their product.

Examiner La Roe: Now, if I get this straight, the hardwood which

your saw mill company which is located at Paducah, obtains, is obtained almost exclusively east of the Mississippi River?

Mr. Sherrill: Altogether.

Examiner La Roe: Now your retail lumber company which deals in construction material, occasionally finds it necessary to buy hardwood lumber from other sources than your saw mill company, is that correct?

Mr. Sherrill: Than our local saw mill company?

Examiner La Roe: Yes?

Mr. Sherrill: Yes sir.

Examiner La Roe: Now where is that hardwood lumber chiefly obtained?

Mr. Sherrill: From the Colfax Hardwood Lumber Company at Colfax, Louisiana.

Examiner La Roe: Can you tell us about what percentage of
157 hardwood purchased by your retail lumber company is purchased from your Colfax company?

Mr. Sherrill: About 25 per cent.

Examiner La Roe: Where is their estimate obtained?

Mr. Sherrill: From the Sherrill-King Mill & Lumber Company, at Paducah. I buy from my own companies wherever it is possible.

Examiner La Roe: So, if I understand it, the only hardwood which you deal in originates at Colfax, Louisiana?

Mr. Sherrill: No; I do not believe you can conclude that.

Examiner La Roe: I mean west of the river.

Mr. Sherrill: West of the river, yes; but the bulk of it is not exclusively, you know, but the bulk of it.

Examiner La Roe: You told me, if I understand you correctly, and I think it is important to get this straight, that your saw mill company at Paducah obtains its supply of hardwood exclusively east of the Mississippi River, did you not?

Mr. Sherrill: Its supply of logs, yes sir.

Examiner La Roe: Your retail lumber company at Paducah obtains its hardwood either from your saw mill company in Paducah or from your saw mill company at Colfax, Louisiana?

Mr. Sherrill: That is correct.

Examiner La Roe: So that there are only two sources that your hardwood comes from, either from your saw mill here in Paducah or from your saw mill at Colfax, Louisiana?

Mr. Sherrill: That is practically true, with, as I stated awhile ago, a few exceptions.

Mr. Haid: Why does your lumber company find it necessary to purchase some hardwood from the mill south rather than purchase all of it from the mill at Paducah?

Examiner La Roe: He has already said that, Mr. Haid; he
158 says sometimes the supply that the mill at Paducah has on hand gets low.

Mr. Haid: Well, that is exactly what I want to get at.

Mr. Sherrill: Well, when I can find the hardwood lumber that the Sherrill-Russell Lumber Company demand at the plant of the Sherrill-King Mill & Lumber Company, I buy from them for the reason that they are located in Paducah. When I cannot find that stock at

their plant, then I buy from the Colfax Hardwood Lumber Company at Colfax, Louisiana, if they have the stock.

Mr. Haid: You mean to say there are certain grades of hardwoods that the Colfax plant handles that you cannot purchase from the Paducah plant?

Mr. Sherrill: It is not impossible for the Paducah plant to furnish provided they have the stock; but they have not the stock at all times.

Mr. Haid: What do you mean, provided they have the stock? Why have they not the stock?

Examiner La Roe: In other words, it is because their supply is low, or because they do not make it?

Mr. Sherrill: I understand, but I am trying to state it without giving you a wonderful volume of transcript here.

Examiner La Roe: I think you are giving your testimony in very good fashion. I only want the question answered accurately, and as promptly as it is possible to answer.

Mr. Sherrill: I will answer that question with an illustration: If the Sherrill-Russell Lumber Company were to secure today an order requiring 100,000 feet of 4/4 first and second white oak, the Sherrill-King Mill & Lumber Company could not furnish that entire quantity, because they only have 40,000 feet on their yard. The remainder of that stock I would buy for the Sherrill-Russell
159 Lumber Company from the Colfax Hardwood Lumber Company at Colfax, Louisiana, for the reason that they have a half million feet in stock today.

Mr. Haid: Well, that illustration is very good, but is that the only instance in which you purchase from the Colfax plant?

Mr. Sherrill: I only purchase under those conditions, giving the local plant the preference on all business that the Sherrill-Russell Lumber Company has to offer in that line.

Mr. Haid: You only purchase from the Colfax plant in case where the Paducah plant is short of the particular grade that you want?

Mr. Sherrill: That is correct.

Examiner La Roe: Is there any lumber that the Colfax plant produces that the Paducah plant does not produce?

Mr. Sherrill: Yes; they produce a higher quality of cypress lumber than the Paducah plant can supply.

Examiner La Roe: Do they produce any gum lumber?

Mr. Sherrill: The Colfax plant?

Examiner La Roe: Yes sir.

Mr. Sherrill: Yes sir, quite a great deal.

Examiner La Roe: Does your Paducah plant produce any gum lumber?

Mr. Sherrill: Yes sir.

Examiner La Roe: So when you want this high grade of cypress lumber it is necessary for you, is it not, to go to the Colfax plant first?

Mr. Sherrill: Yes sir.

Examiner La Roe: So it would not be exactly true, would it, that

you do not get it from the Paducah plant because they are short of it—it is because they do not make that kind?

Mr. Sherrill: Because they cannot supply it.

Mr. Haid: Now can you give us a comparison of the grades of gum? Are there any grades of red gum or any other grades of gum, red, or any other kind, that are produced by the Colfax plant that are not produced by the Paducah plant?

Mr. Sherrill: The supply of timber for our local saw mill is not of the quantity by a great deal that the Colfax Hardwood Lumber Company plant have.

Mr. Haid: I am speaking of quality, Mr. Sherrill, and not quantity.

Mr. Sherrill: For that reason it is not always practicable for us to hope to find on the local saw mill yard a quality that we can find from the Colfax plant, for the reason that in sawing the log of a given diameter it might be possible to develop a certain number of box boards, and from our local plant, where the quantity of gum cut is not to be compared with the Louisiana plant, we cannot hope to develop as much of that quality of lumber as we can from the Louisiana plant.

Mr. Haid: Now to shorten your answer, the fact is, that you do not get within a radius of 250 miles of Paducah the high grade of gum lumber that you get in Louisiana, is not that correct?

Mr. Sherrill: Yes.

Mr. Haid: And the same is true of oak, is it not, that you go to Louisiana for your higher grades?

Mr. Sherrill: Not necessarily so in Oak.

Mr. Haid: Well, can you explain that answer a little bit? What do you mean by "not necessarily so"?

Mr. Sherrill: I believe I have covered that point twice or three times before, but I will try to do it again.

Mr. Haid: Well, you covered it in a way to leave some things to inference. What we want to get at are the bare facts.

Mr. Sherrill: I will try to give you those as best I can.

Mr. Haid: Very well, sir.

Mr. Sherrill: When we are in demand for certain qualities of lumber and the local plant cannot furnish it, then we must look elsewhere for that lumber, and for me to state that there is a larger quantity of Oak timber that is practically to be sawn into lumber at the Colfax plant and can be had and sawn at the Paducah plant, I could not say that that is true for the reason that at our Louisiana plant we probably have now about two years' cut, whereas locally we might continue to draw for a longer period of time than that by paying a higher price for the logs.

Mr. Haid: Referring now to this question of rates, Mr. Sherrill, the three points which you have mentioned, Shreveport and two others—I have forgotten what they were—from which you say the 18-cent rate exists to Paducah and 16 cents to Cairo, that lumber moves via the Vicksburg, Shreveport & Pacific and Vicksburg, does it not?

Mr. Sherrill: The lumber that we ship from Colfax, Louisiana, to Paducah is routed via way of Shreveport and Vicksburg.

Mr. Haid: And the rates via that route are 2 cents higher than the rates from points directly opposite, east of the river, are they not?

Mr. Sherrill: The rate from Colfax, Louisiana, to Paducah is 18 cents, and to Cairo is 16 cents, and from Natalbany, Louisiana, to Paducah is 16 cents, and to Cairo 14 cents.

Mr. Haid: In other words, from points on the Vicksburg, Shreveport & Pacific the rates are uniformly 2 cents higher than the rates from east of the river to both Paducah and Cairo?

Mr. Sherrill: I cannot answer that.

Mr. Haid: Well, so far as your knowledge extends, that is true, is it not?

Mr. Sherrill: As far as my knowledge extends, yes.

162 Mr. Haid: Do you purchase any of your lumber, either yellow pine or hardwoods, in Arkansas?

Mr. Sherrill: A very small per cent of yellow pine have I bought in Arkansas.

Mr. Haid: Why?

Mr. Sherrill: I have never had an attractive price named me by mills in Arkansas.

Mr. Haid: Are not the rates on hardwoods from northeast Arkansas very much lower than the rates from Colfax, Louisiana?

Mr. Sherrill: Not that I have knowledge of.

Mr. Haid: Not that you have knowledge of?

Mr. Sherrill: Not that I know of.

Mr. Haid: Have you ever looked into it?

Mr. Sherrill: Yes, I have in the past, but I am not able to speak definitely in answer to that inquiry at present.

Examiner La Roe: It would not make any difference anyway, Mr. Haid, if he could not get his price; it would not make any difference what the rate is.

Mr. Haid: Have you ever made any attempt to purchase there?

Mr. Sherrill: Oh, yes.

Mr. Haid: And why did you not purchase there?

Mr. Sherrill: The particular feature that would interest us was the price. We make no attempt to keep a record of the rates applying from every station from which we might make an inquiry. We only have time to consider the price per thousand feet that the mills would quote, and be governed accordingly.

Mr. Haid: And the price delivered from the northeastern Arkansas points was no lower, you mean to say, than from the Louisiana points.

Mr. Sherrill: The prices that were named by the points
163 that we did not favor with an order was because the price was higher. I won't say the reason for that was because the freight was higher or lower.

Mr. Haid: I ask you whether the price was the same, or lower or higher, than the price at which you could purchase in Louisiana?

Mr. Sherrill: The price was higher or they would have secured the order:

Mr. Haid: Or was at least as high?

Mr. Sherrill: There is not one time in a thousand that you will find the quotation on hardwood lumber identical upon — you are getting quotations from mills scattered in different sections of the country.

Mr. Wright: Mr. Sherrill, with reference to rates from certain points you named before, I think Woodworth was one, those were all rates through Southern crossings, were they not?

Mr. Sherrill: I cannot answer that question.

Mr. Wright: Well, what was the confirmation that you obtained from Mr. Hattendorf, of the Illinois Central, relative to certain rates?

Mr. Sherrill: His advice, under date of April 13, 1915, "I quote on next attached the present rates on pine lumber, also on other kinds, from and to the points requested."

Mr. Wright: He gives the rate there, does he.

Mr. Sherrill: Yes sir.

Mr. Wright: What was the rate, 16 cents, did you say?

Mr. Sherrill: From what point and to what point?

Mr. Wright: Woodworth was one of the points, I think; Lake Charles was another. De Ridder and Bon Ami.

Mr. Sherrill: Those points were not quoted by Mr. Hattendorf, and I do not believe, if you recall my testimony, that I stated they were.

164 Mr. Wright: I was not clear. That was the reason I asked that question.

Mr. Sherrill: Those points were not quoted by him. The Long-Bell Lumber Company advised us—

Mr. Wright (interrupting): What was the confirmation you obtained from Mr. Hattendorf by telephone?

Mr. Norman: Mr. Donovan.

Mr. Wright: All right; the local man.

Mr. Sherrill: Mr. Donovan was in my office and I asked him what rate of freight applied from these points to Paducah. He did not know. I gave him a list of those and he said he would make inquiry and advise me later, and he did so by 'phone.

Mr. Wright: And what rate did he quote?

Mr. Sherrill: Sixteen cents from the points of De Ridder and Bon Ami.

Mr. Wright: Did he give you the tariff reference for that 16-cent rate so it could be verified?

Mr. Sherrill: He did not.

Mr. Wright: That was to Paducah, was it, from those four points mentioned?

Mr. Sherrill: Those four points to Paducah.

Mr. Wright: All right. That is all.

Mr. Ducker: Mr. Sherrill, is it your opinion that the manufacturer that has the lowest rate to the consuming territory makes the price?

Mr. Sherrill: He should be able to make the best price, the cheapest price.

Mr. Ducker: You say he should be able to make the best price?

Mr. Sherrill: He should be able to make the cheapest price.

165 Mr. Ducker: The rate on yellow pine lumber from the west side of the river to Cairo or Ohio or Mississippi River crossings is 2 cents higher than it is from equi-distant points on the east side of the river, is not that true?

Mr. Sherrill: I am not prepared to state that that is the case covering a blanket territory. If you will give me the names of the towns.

Mr. Ducker: That is the territory I refer to, the blanket territory. Then you do not think that the yellow pine producer on the west side of the river would have to meet the competition of the 14-cent rate on the east side of the river?

Mr. Sherrill: If a manufacturer expects to get the market price for lumber in any one given territory, why, he certainly would be interested in having an equal rate of freight.

Mr. Ducker: Do you know what is the largest consuming territory of yellow pine lumber?

Mr. Sherrill: No; I could not answer that.

Mr. Ducker: Would you not say that the territory north of the Ohio River and east of the Mississippi River would be the largest consuming territory of yellow pine lumber?

Mr. Sherrill: I would not answer that question, because my answer would not be worth any consideration. I do not know.

Mr. Ducker: You do not know, then?

Mr. Sherrill: No sir.

Examiner La Roe: I do not think you ought to ask this witness so many questions about rates and matters that he does not claim to be informed on.

Mr. Ducker: Mr. Sherrill, do you know whether the Chicago Lumber & Coal Company have different delivered prices from their mills east and west of the river?

166 Mr. Sherrill: To Paducah?

Mr. Ducker: At Paducah, yes.

Mr. Sherrill: Different delivered prices to Paducah, Kentucky?

Mr. Ducker: Yes sir.

Mr. Sherrill: Why, certainly they must necessarily quote a different price when a different rate applies.

Mr. Ducker: Do you know that they do?

Mr. Sherrill: I can only answer that by stating that I have had them to refuse to quote on certain inquiries I would send them, stating that the point from which they would be able to ship the stock they would not be able to quote an attractive price from on account of the rate of freight.

Mr. Ducker: You have a communication of that kind from them?

Mr. Sherrill: Yes sir; in my files in the office.

Mr. Ducker: Mr. Examiner, we would like to have that letter produced as part of the record.

Examiner La Roe: I am sure Mr. Sherrill would have no objection to furnishing a copy of that.

Mr. Sherrill: I would be very glad to, but I cannot *presume* it without a little time.

Examiner La Roe: You can mail a copy of that to the Commission and a copy to the counsel.

Mr. Norman: You can produce it by this afternoon, can you not, Mr. Sherrill?

Mr. Sherrill: Possibly so; and if not, I would like the privilege of mailing it to you, because I have other work to do, and if it would be of interest to the Court it may be possible I have in my files such letters from other mills.

Mr. Ducker: Mr. Sherrill, you stated that Louisiana was
167 the largest producing section of yellow pine lumber—is not — the substance of what you stated?

Mr. Sherrill: I stated that Louisiana ranks second or third as a producing state of lumber.

Mr. Ducker: Then you know how the total production of yellow pine lumber in the States of Alabama and Mississippi compares with the total production in Louisiana?

Mr. Sherrill: I think Mississippi follows Louisiana. I am not positive where Alabama ranks, but I know it is not fourth and perhaps not fifth.

Mr. Ducker: You also stated, Mr. Sherrill, that you bought on the west side of the river because you were able to get both long and short leaf. Is it your information that there is no long and short produced—that is, both kinds of yellow pine timber produced on the east side of the river?

Mr. Sherrill: There is long and short leaf yellow pine on the east side of the river, and west side of the river.

Mr. Ducker: Then you can buy mixed carloads or mixed grades of long and short leaf on the east side of the river as well as on the west side of the river, can you not?

Mr. Sherrill: Yes sir.

Examiner La Roe: Mr. Sherrill did not testify to that effect at all. He said he sometimes found it to advantage to buy on the west side of the river. He did not say both kinds did not grow east of the river.

Mr. Ducker: Mr. Sherrill, you stated you were interested in a company here that handles logs,—that is, you brought in the logs and manufactured them into lumber here. Is that true?

Mr. Sherrill: Yes sir.

Mr. Ducker: Could you give some approximate idea of the number of carloads of logs you bring into Paducah annually?

168 Mr. Sherrill: Over 200.

Mr. Ducker: Over 200 cars?

Mr. Sherrill: Yes sir.

Mr. Ducker: Have you any idea what the total rail movement of logs is into Paducah for manufacture into lumber from the lines south of the river?

Mr. Sherrill: No sir.

Mr. Ducker: About how many carloads of logs, Mr. Sherrill, does it take to manufacture a carload of lumber?

Mr. Sherrill: Not less than three.

Mr. Ducker: On your inbound movement of logs, say, for instance, off the Illinois Central, your rate on those logs is 2 cents per 100 pounds less than the rate from an equi-distant point on the Illinois Central to Cairo, is not that true?

Mr. Sherrill: I am not acquainted with the rate of freight applying on logs to Cairo.

Mr. Norman: If the Examiner please, I do not see what that has to do with this case. That is a milling in transit proposition.

Examiner La Roe: I think it is a pertinent question, but I do not think this witness ought to be asked as to what rates are. He hasn't posed as a rate expert.

Mr. Ducker: The proposition we want to show here, Mr. Examiner, is simply this: In the movement of logs into Paducah from an equi-distant point, say on the Illinois Central, there is a mileage scale. That mileage scale applies to Paducah. The mileage scale coming up the line to Cairo applies to East Cairo.

Examiner La Roe: Then you had better put a witness on the stand to testify to this. This is cross examination. Do you not have your own witness to testify to those facts?

Mr. Ducker: We will let it go. That is all, Mr. Sherrill.
(Witness excused.)

169 O. P. LEIGH was called as a witness, and, having been duly sworn, testified as follows:

Direct examination:

Mr. Norman: Mr. Leigh, you live in Paducah?

Mr. Leigh: Yes sir.

Mr. Norman: Are you connected with the Leigh Banana Case Company?

Mr. Leigh: I was when they were in Paducah.

Mr. Norman: They did have a plant in Paducah?

Mr. Leigh: Yes.

Mr. Norman: And did it start in Paducah?

Mr. Leigh: Yes.

Mr. Norman: What did it manufacture?

Mr. Leigh: Banana crates.

Mr. Norman: Those are manufactured from lumber, are they?

Mr. Leigh: Veneer lumber.

Mr. Norman: Where did they draw the supply of lumber from?

Mr. Leigh: At the time they started?

Mr. Norman: Yes, at the time they started.

Mr. Leigh: Principally from Paducah.

Mr. Norman: From around locally?

Mr. Leigh: Yes.

Mr. Norman: Where have they been drawing their supply from in recent years?

Mr. Leigh: Des Arc, Arkansas.

Mr. Norman: Where is their plant now?

Mr. Leigh: It is located at Des Arc, Arkansas, on the Rock Island.

Mr. Norman: I mean where is the Leigh Banana Case Company?

170 Mr. Leigh: The headquarters of the Leigh Banana Case Company is at Chicago, but the plant that was formerly in Paducah is in Cairo.

Mr. Norman: Why was it moved to Cairo?

Mr. Haid: Mr. Examiner, I am going to object to that unless this witness testifies he was employed by that Company in such capacity as would qualify him to have that information. He has simply stated he was engaged with the Company and not in what capacity.

Mr. Norman: What was your connection with the Company?

Mr. Leigh: I managed the plant.

Mr. Norman: Who is the President of that Company?

Mr. Leigh: Charles Q. C. Leigh, my brother.

Mr. Norman: Do you know why that plant moved from Paducah to Cairo?

Mr. Leigh: On account of freight rates.

Mr. Norman: What is the difference in freight rate to Cairo and Paducah from Des Arc?

Mr. Leigh: The difference is 19 and 11 in favor of Cairo—or, I believe 18 if it moved through Cairo gateway.

Mr. Norman: A difference of 6 cents anyhow against you?

Mr. Leigh: Yes.

Mr. Norman: That is all.

Cross-examination:

Mr. Haid: Mr. Leigh, as Manager of that Banana Case Company did you attend any of the Board meetings?

Mr. Leigh: No.

Mr. Haid: You were not a Director of the Company?

Mr. Leigh: No.

Mr. Haid: You did not participate in any of the discussions of the Board of Directors?

Mr. Leigh: Not in meetings, no.

171 Mr. Haid: Who routed the freight of this Company from Des Arc to Paducah?

Mr. Leigh: The Chicago office.

Mr. Haid: Do you know what actuated them in routing that freight?

Mr. Leigh: I do not understand the question you want me to answer.

Mr. Haid: Do you know what controlled them in the routing of their freight? Do you know why they would forward this lumber over one route or another?

Mr. Leigh: Why they would forward it? The only reason I know is—of course it would have to get to Paducah, and there are

only two routes that they could route it over, the Nashville, Chattanooga & St. Louis and Illinois Central.

Mr. Haid: And why did they route it over one in preference to the other?

Mr. Leigh: I do not know any reason for that.

Mr. Haid: You do not know?

Mr. Leigh: No.

Mr. Haid: Can you say whether or not it is a fact that some, and possibly many, of their shipments were routed by them over the route taking the higher rate?

Mr. Leigh: My understanding is, it was on account of time.

Mr. Haid: How much better time does the Rock Island, in connection with the Nashville, Chattanooga & St. Louis, make than the Illinois Central?

Mr. Leigh: They made possibly a couple of days—two days at a time.

Mr. Haid: Do you know that to be a fact?

Mr. Leigh: I think that is a fact.

172 Mr. Haid: And your people were willing to pay the higher rate in order to secure the quicker service?

Mr. Leigh: They did pay it, yes.

Mr. Haid: That is all.

Examiner La Roe: What kind of wood are these banana boxes made of?

Mr. Leigh: Gum; any cheap lumber.

Examiner La Roe: Any cheap kind of lumber?

Mr. Leigh: Yes.

Examiner La Roe: Why did you get your supply from Des Arc? Did you ever get it from any other point?

Mr. Leigh: Well, up to the time they built the Des Arc mill—the mill is operated under the name of the White River Lumber Company by the Leigh Banana Case Company, and they placed it at Des Arc on account of cheaper logs.

Examiner La Roe: The banana Case Company owns the mill at Des Arc and that is the reason you got your supply there?

Mr. Leigh: Yes sir.

(Witness excused.)

Mr. Norman: Complainant rests.

Mr. Ducker: I will call Mr. U. S. Musick.

173 U. S. MUSICK was called as a witness, and, having been duly sworn, testified as follows:

Direct examination:

Mr. Ducker: Mr. Musick, where do you live?

Mr. Musick: I live in Cairo, Illinois.

Mr. Ducker: Are you connected with any enterprise there?

Mr. Musick: I am Secretary of the Louisiana Lumber Company.

Mr. Ducker: Are you in any way associated with the Cairo Association of Commerce?

Mr. Musick: I am a member of the Cairo Association of Commerce.

Mr. Ducker: Are you on any important committee of that Association?

Mr. Musick: I am on the Traffic Committee of that Association.

Mr. Ducker: How long, Mr. Musick, have you been in the lumber business?

Mr. Musick: Seventeen years.

Mr. Ducker: About 17 years?

Mr. Musick: Yes sir.

Mr. Ducker: All right, Mr. Musick, you may proceed.

Mr. Musick: I desire to offer testimony in behalf of the lumber interests of Cairo through the Cairo Association of Commerce, in a protest of the action begun by the Paducah Board of Trade against the Illinois Central Railroad, et al., asking for rates equal to Cairo rates to apply from Paducah to points West of the Mississippi River on hard and soft woods, as is charged in their complaint.

This testimony is not individual, it is not given directly
174 for the Louisiana Lumber Company, of which I have charge.

This testimony is not individual, it is not given directly
merce, in behalf of the lumber interests of Cairo and the community at large, against the action of the Paducah Board of Trade versus Illinois Central Railroad and others, Docket Number 7736, wherein an adjustment of rates on lumber and forest products is sought on an equality with rates to Cairo from certain producing territories situated West of the Mississippi River, within the States of Arkansas and Louisiana, on, and South of the line of the Chicago, Rock Island & Pacific Railway from Memphis, Tennessee, to Little Rock, Arkansas, including Des Arc, Arkansas.

Cairo, Illinois, is located at the extreme southern point of the State; where the Ohio River empties into the Mississippi River it is

175 miles North of Memphis, Tennessee;

150 miles South of St. Louis, Missouri;

364 miles South of Chicago, Illinois;

350 miles from Indianapolis, Indiana.

It is on the Ohio River and on the Mississippi River. Cairo has a population of about 17,000 people, practically all being engaged in the work of assembling, manufacturing and distributing various products, chief among which is lumber and grain,—lumber being very much the largest.

At Cairo is manufactured:

Lumber,

Mill Work,

Ready-made house,

Carriage materials, mostly in the white;

Implement and vehicle stock, in various stages of manufacture;

Silos,

Boxes and box shooks,

175 Veneer;

Egg case material,

Handled.

It may be noted that practically all of the above products are

shipped from Cairo, and are not used in Cairo by the ultimate consumer.

Attention is called that practically the entire working population of the city is engaged in the above pursuits:

Cairo is located on the main line of the following important railroad systems:

Illinois Central; Mobile & Ohio; Big Four; St. Louis, Iron Mountain & Southern and St. Louis Southwestern. The combined mileage is 18,456 miles. These railroads practically represent the lumber carrying lines in the distribution of forest products from producing sections in the South to the Mississippi Valley and Central Freight Association territory.

We say it is not by accident that Cairo is a basing point. It is a natural basing point. It is not such because of the work or ingenuity of any one engaged in rate-making. It has been a basing point since lumber moved from the South to the North and has remained such for reasons as good and as strong as those establishing it.

Such arrangement works to the detriment of no community nor class of people.

Cairo is offering no objection to rate facilities afforded to other communities. Our desire is, to maintain our present position, which we think is a natural one, and should not be molested, and, while we think it would not be entirely sound from a rate-making standpoint to provide Paducah, Kentucky, with the Cairo basis, we would offer no serious objection, providing our situation is left unchanged.

We say it is unsound, because any other community situated as

176 Paducah is, in some other direction, could, with equal force, make a similar demand. As an illustration, Sikeston, Missouri, or Thebes, Illinois, have fully as strong claim to Cairo rate basis on lumber from points on the Illinois Central and Mobile & Ohio Railroads, originating in the States of Mississippi and Alabama, as Paducah could have in its claim for Cairo basis on lumber from points on the St. Louis, Iron Mountain & Southern Railroad, and the St. Louis Southwestern Railroad in the States of Arkansas, Louisiana and Texas, covering the territory described.

To make clear the present rate structure we would call attention that the present rate to Paducah, Kentucky, is as follows:

Illinois Central	14 cents;
Mobile & Ohio	14 cents;
Rock Island	22 cents;
St. Louis Southwestern	22 cents;
St. Louis, Iron Mountain & Southern.....	22 cents.

The rate to Cairo, Illinois, is as follows:

Illinois Central	14 cents;
Rock Island	16 cents;
Mobile & Ohio	14 cents;
St. Louis Southwestern	16 cents;
St. Louis, Iron Mountain & Southern.....	16 cents.

To Sikeston, Missouri, as follows:

Illinois Central	22 cents;
Mobile & Ohio	22 cents;
Rock Island	16 cents;
St. Louis Southwestern	cents;
St. Louis, Iron Mountain & Southern.....	16 cents.

177 The rate to Thebes, Illinois, as follows:

Illinois Central	18.2 cents;
Mobile & Ohio	18.2 cents;
Rock Island	16 cents;
St. Louis Southwestern	16 cents;
St. Louis, Iron Mountain & Southern..	16 cents.

The rate to Mound City, Illinois, as follows:

Illinois Central	14 cents;
Mobile & Ohio	14 cents;
Rock Island	18 cents;
St. Louis, Iron Mountain & Southern.....	18 cents;
St. Louis Southwestern	18 cents.

All above rates based on yellow pine rate from common points.

Examiner La Roe: What common points? Do you mean in the extreme southern pine territory?

Mr. Musick: The blanket rate, yes sir. In comparing the geographical location of these towns it would appear that the present rate basis is not at all out of balance, and to maintain them as they are would do full justice to all concerned.

It is our opinion that the rate on lumber to Cairo, Illinois, is a normal rate. It is not an unusually low rate; it is a profitable rate.

Lumber tonnage, with rates now in effect, is considered desirable tonnage on the part of the carriers. On rates now applying, lines up to Cairo earn more satisfactory revenue on the business to Cairo than is earned by those of other lines on business to East St. Louis or to territories by East St. Louis gateway. In other words, the earnings north of Cairo are thinner than they are south of Cairo.

Lumber tonnage to and from Cairo is desirable because of its heavy volume. It moves in large quantities, and is practically solid trains over certain divisions. The movement is necessarily north. The density of traffic through Cairo is much greater than through Paducah. Cairo being the main gateway for all the movement both thru and local, while Paducah is located on a branch of the Illinois Central and on no other important lumber carrying line.

It is true the Nashville, Chattanooga & St. Louis serves Paducah, but they originate very little lumber tonnage, comparatively speaking, and practically none of the largest commodity, which is yellow pine.

On this point we refer you to the testimony of their General Freight Agent in I. & S. Docket 520.

The Nashville, Chattanooga & St. Louis do not, and are not asked to, provide rates to Thebes, Illinois; Sikeston, Missouri, or similar points West of Cairo and west of the Mississippi River conversely situated.

Cairo does not enjoy, and does not feel she is entitled to the same rate from all of the Southeastern lines as the rates made from points on the Illinois Central and Mobile & Ohio Railroads. The Louisville & Nashville Railroad and other Southeastern lines have a higher rate.

Furthermore, Cairo does not enjoy what we consider a standard rate of 13 cents from all points on Western lines. The Missouri, Kansas & Texas Railway do not afford a rate to Cairo equal to the rate made by the Iron Mountain, Cotton Belt, Rock Island, Kansas City Southern and other important lumber carrying lines. Also, the Frisco maintain a rate to Cairo higher than the lines just mentioned.

We feel that physical conditions are such that the Missouri, Kansas & Texas could not reasonably be expected to maintain the same rate to Cairo as does the Iron Mountain.

We want to say a word about the importance and service
179 performed by assembling and distributing yards at certain centers, including Cairo, Memphis, St. Louis, Cincinnati, Louisville and elsewhere.

The great majority of mills engaged in the manufacture and marketing of lumber and forest products are small operators and small mill men. There is a record of several thousand of them and there are many others of whom there is no definite record. This applies to yellow pine, cypress and all kinds of hardwoods. Every community in the lumber producing territory has its small operators engaged in the manufacture and sale of the forest products, and the majority of whom are so located that they are able to put upon the market the product of small forests which the larger operator cannot handle and cannot afford to own, because they are not accessible and are not large enough to justify the establishment of a large mill.

If it were not for these small operators, these small tracts could not readily find a way to the market and be at the disposal of the consumer. The small operator is not sufficiently familiar with the market to know what to cut his material into, nor would he be qualified to market it to the best advantage if it were possible for him to hold it until it is in a marketable condition and until his assortment was large enough to serve the consumer.

In the aggregate, these small operators furnish a very large quantity of material and benefit their respective communities by being able to change these scattered forests into merchantable merchandise, returning the proceeds to their communities. These small operators cannot handle that business along the line of the large mill because of the reasons stated. It is, therefore, a matter of vital importance to them that assembling yards be maintained where

they can find a steady and regular market for their raw product, green and direct from the saw. Assembling yards provide this facility. Such a yard receives its lumber green, pays for it, sorts it as to grade and size, holds it until it is dry and ready to use, and, having done so, is prepared to serve the consuming trade.

It will be observed that there are also many small consumers as well as small producers whose business does not justify them in carrying a large stock of dry lumber. A great many are not financially able to do so. A great many others engaged in special lines of manufacture could not carry a stock from year to year because their requirements from year to year are different. They find it necessary to get stock immediately, and of a suitable character and ready to use. This can only be gotten from a distributing yard or from very large mills, and, in many instances, not from the large mills.

At times delivery from the mills is not sufficient to meet the requirements, and, in such cases, shipments from such centers as Cairo are necessary.

It is plainly apparent that the construction of rates making possible such gateways and centers serves to good purpose a very large number of people, consisting of all those engaged in the production of lumber as described, all of those engaged in assembling and distributing, all of those engaged in the final work of consumption, and, lastly, the consumer himself who owns the property in which such material is ultimately used, because it reaches him on a lower basis of cost than would be the case if the construction of rates made it possible to serve in this manner.

Examiner La Roe: We will take an adjournment until 2 o'clock. Whereupon, at 12:30 P. M., a recess was taken until 2 P. M.

After recess. 2:00 P. M.

U. S. MUSICK was recalled for further examination, and, having been previously sworn, testified as follows:

Direct examination continued:

181 Mr. Musick: The importance of Cairo as a distributing point can best be illustrated by the following figures, obtained from the records of the railroads and records of shippers, and the records of the United States Government covering the amount of tonnage entering the port of Cairo during the years 1913 and 1914. It is well known that business was at a low ebb during these two years, especially 1914.

Number of cars received all rail by 16 firms reporting out of 23 engaged, 15,943 cars.

Number of cars reconsigned at that point by the Mobile & Ohio and Big Four Railroads, 31,495 cars.

It will be noted that this does not include receipts and forwarding on reconsignment of the Iron Mountain, Illinois Central and Cotton Belt.

The amount of logs and lumber received by river at Cairo, largely from points not provided with rail facilities, 8,298 cars.

There are only three yards located at Cairo, a portion of whose business is devoted to local distribution. Of these three their receipts for the two years, 1913 and 1914, were 735 cars. Their shipments to other territories during the same period, 294 cars.

From this it will be seen that only 441 cars were actually consumed by Cairo and vicinity for the two years under consideration.

The figures shown here are those covering business actually handled at and through Cairo. This represents only a small percentage of the actual movement of lumber from South to North through this gateway, indicating that this is a natural gateway, a proper gateway, and that the same situation does not apply, and should not apply, to Paducah.

In Paragraph 2, page 3, of the petition of the Paducah Board of Trade covering the instant case the statement is made:

182 "That the principal competitors of the lumber merchants and manufacturers of Paducah are located at Cairo, Illinois."

The character of business claimed to be engaged in at Paducah is carried on to a very much larger extent in other cities, namely, St. Louis, Missouri; East St. Louis, Illinois; Thebes, Illinois; Cairo, Illinois; Memphis Tennessee; Jackson, Tennessee; Nashville, Tennessee; Evansville, Indiana; Louisville, Kentucky; Cincinnati, Ohio.

It is not proper to say that any of the towns mentioned constitutes any large part of the competition of any one or several of its competing towns. That this claim of theirs is far from the real facts it made apparent when we observe that to eliminate the competition of any one of the cities mentioned would scarcely be felt, and if Cairo, Illinois, was entirely eliminated from the lumber business, Paducah's competition would remain as before. Their competition is general, and is not confined to Cairo.

If it were true that Paducah's only competition was Cairo, it might follow that Cairo's competition would be only Paducah. Cairo's competition is all of the cities mentioned. We do not feel one more than the other that we know of.

If the contention of Paducah should be sustained, Cairo should certainly be in position to ask for standard rates from every point South of an east and west line running through Cairo where lumber is produced from the Western plains to the Atlantic Seaboard. The consequent readjustment might injure Cairo and all those whom we are serving, and not benefit Paducah. To our mind to follow such a theory would reduce the entire rate fabric of the country to a mileage basis. Such a thing, we think, would be disastrous and unthinkable.

As previously stated, Cairo is making no fight on any other community, but our recent experience in which the carriers attempted to comply with the order of the Commission in the Norman Lumber

183 Company case, wherein rates on forest products were involved from points South of the Ohio River, also in the original Paducah case, which advances are now the subject of investigation before the Commission in I. & S. Docket 520, leads us to believe that if an order is made for the equalization of rates on lumber and forest products as prayed for by the Paducah Board of Trade, Cairo rates, as well as those of Memphis, Thebes, St. Louis and other competitors mentioned, will come in for further advances. This would disturb the rate situation for another indefinite period, and necessarily bring in for review the entire rate situation on lumber and forest products from all points in the South and Southwest.

Mr. Ducker: Mr. Musick I do not believe you have located Mound City, Illinois. Please state how that is situated with reference to Cairo.

Mr. Musick: Mound City is north and east of Cairo.

Mr. Ducker: About how far?

Mr. Musick: About 10 or 11 miles, located on the Ohio River, on the Big Four Railroad, on the Illinois Central Railroad.

Mr. Ducker: That is all.

Cross-examination:

Mr. Norman: Mound City takes the same rate as Cairo, does it not?

Mr. Musick: Over certain lines.

Mr. Norman: Thebes takes the same rate as Cairo?

Mr. Musick: Yes, over certain lines.

Mr. Norman: Has the Louisiana Lumber Company a manufacturing plant?

Mr. Musick: No; we have a yard at Cairo.

Mr. Norman: Do you ship lumber into the yard and assemble it green?

Mr. Musick: Yes sir.

184 Mr. Norman: How much more does lumber weigh green than it does dry?

Mr. Musick: Depends on the lumber entirely.

Mr. Norman: Oak?

Mr. Musick: Oak?

Mr. Norman: Yes.

Mr. Musick: I do not know; we don't handle much oak.

Mr. Norman: What do you handle?

Mr. Musick: Yellow pine largely.

Mr. Norman: How much more does yellow pine weigh green than dry?

Mr. Musick: Well, dry yellow pine in the sizes called for on the market weighs all the way from 800 pounds per thousand feet to 3800 pounds; green, it weights all the way from 3500 pounds to possibly 5,000 pounds.

Mr. Norman: Would you say that it would weigh, the same lumber, as much as 20 per cent more green than dry?

Mr. Musick: Well, a percentage would not apply unless you confined it all to one article, both green and dry, which would be impossible.

Mr. Norman: Now I understand you to say that you think the present rates to Cairo are normal and reasonable for the service performed, is that true?

Mr. Musick: Yes sir.

Mr. Norman: Why would not they be adequate and reasonable for the service performed to an equi-distant point for an equal haul to any other point?

Mr. Musick: Well, the amount of traffic and the condition of lines over which they operate, the number of trains hauled, the amount of other tonnage, the general question of density of traffic,

I should think would govern; I am not a railroad man.

185 Mr. Norman: You are not a railroad man?

Mr. Musick: No sir.

Mr. Norman: That is all.

Mr. Haid: Mr. Musick, what railroads diverge from Cairo, and what lumber consuming territory do they serve?

Mr. Musick: You mean north bound?

Mr. Haid: Yes sir.

Mr. Musick: The St. Louis, Iron Mountain & Southern; the Mobile & Ohio; Illinois Central, and the Big Four Railroads.

Mr. Haid: In what direction does the Big Four operate?

Mr. Musick: The Big Four lies a little east of north, following the Ohio River for a short distance and making its way to Danville, Illinois.

Mr. Haid: It serves both Central Freight Association and Official Classification territory, does it not?

Mr. Musick: Yes sir.

Mr. Haid: The Illinois Central also serves Central Freight Association territory, as does the Mobile & Ohio?

Mr. Musick: The Illinois Central has a line to St. Louis from Cairo and a line direct to Chicago, and a line through to Dixon, Illinois, and west to Council Bluffs and Iowa.

Mr. Haid: And, with its Western lines, serves Western Trunk Line territory as well?

Mr. Musick: Yes sir.

Mr. Haid: And the Iron Mountain, in connection with the Missouri Pacific System, also serves Western Trunk Line territory, does it not?

Mr. Musick: Yes sir.

Mr. Haid: Do those same conditions exist at Paducah?

186 Mr. Musick: I understand they do not. The Big Four, Missouri Pacific, Iron Mountain, neither of them reach Paducah.

Mr. Haid: You have stated, have you not, that the Cairo rates apply to Thebes. Can you say whether or not that is due to the fact that both the Iron Mountain and the Cotton Belt now reach Cairo through Thebes, and is due, also, to the fact that the Frisco, which

does not serve Cairo but does serve Thebes, has adopted the Cairo rates at Thebes in order to compete with the lines reaching Cairo?

Mr. Musick: I have stated that certain lines made the same rates to Thebes as to Cairo, and not all lines. My testimony shows that all lines do not. It is a fact that the movement of lumber over the Iron Mountain and Cotton Belt to Cairo from the Southwest moves through Thebes, and that the Frisco makes a 16-cent rate to Thebes and does not make a 16-cent rate to Cairo.

Mr. Haid: That is all.

Mr. Norman: Would you be willing for Paducah to have the same rates as Cairo, provided Cairo's rates were not changed?

Mr. Musick: Well, my testimony stands for itself.

Mr. Norman: Well, I do not think you have stated whether you would or not. I would like to know whether you would or not.

Mr. Musick: Cairo has plenty of troubles at home and they are not seeking them elsewhere. It is not for us to come and take up Paducah's fight, or any other town.

Mr. Norman: Would you be?

Mr. Musick: I have stated we would in my testimony.

Mr. Norman: All right. I did not know you had.

Mr. Haid: In other words, should Paducah have the benefit of the competitive conditions existing at Cairo?

Mr. Musick: I think they should not, and I have given my reasons for it.

187 Mr. Haid: And the Paducah rate from west of the river, in your opinion, should be higher than the rate to Cairo?

Mr. Musick: Certainly it should.

Mr. Haid: That is all.

(Witness excused.)

188 M. S. CARTER was called as a witness, and, having been duly sworn, testified as follows:

Direct examination:

Mr. Ducker: Mr. Carter, where do you live?

Mr. Carter: Cairo, Illinois.

Mr. Ducker: Are you connected with any enterprise in that city?

Mr. Carter: I am.

Mr. Ducker: Will you please name the concern?

Mr. Carter: The Vehicle Supply Company.

Mr. Ducker: What particular line of trade do they follow?

Mr. Carter: We manufacture and deal in wagon material, implement stock, and lumber.

Mr. Ducker: Do you have a place, or are you in any way connected with any committee of the Cairo Association of Commerce?

Mr. Carter: I am.

Mr. Ducker: What position do you occupy?

Mr. Carter: I am Chairman of the Traffic Bureau.

Mr. Ducker: And that is a part of the Association of Commerce?

Mr. Carter: It is.

Mr. Ducker: Mr. Carter, you were present, I believe, this morning when Mr. Sherrill testified that so far as one of his companies in Paducah is concerned, there was a movement of possibly 200 carloads of logs into Paducah which were manufactured into lumber.

Mr. Carter: There was.

Mr. Ducker: Now, from an equi-distant point south of the Ohio River, say on the Illinois Central, what would be the difference in the rate from that point to Cairo and from the same point to Paducah?

Mr. Carter: On logs and rough material there is a material rate which is based on mileage and an arbitrary of 2 cents is charged Cairo on account of the bridge, so that Paducah, from an equal distance, enjoys a 2-cent rate less on logs than Cairo.

Mr. Ducker: That 2 cents comes about in what way, Mr. Carter?

Mr. Carter: They charge the full rate and then they refund to the extent of the mileage basis when the products are shipped out over the same line—the products of the log.

Mr. Ducker: Is it or is it not a fact that the 2 cents is the bridge arbitrary?

Mr. Carter: It is.

Mr. Ducker: How many carloads of logs or billets or bolts does it take to make a carload—say using logs—one carload of lumber?

Mr. Carter: Of green logs it would take three cars of logs at least to make one carload of lumber, and dry lumber it would take over four.

Mr. Ducker: Now, using one carload of outbound product made from three carloads of logs into Cairo as against three carloads of logs into Paducah and one carload of outbound product shipped, say, to Chicago—what advantage has Paducah over Cairo at the present time on that basis?

Mr. Carter: I have taken 300,000 pounds as an illustration: A 2-cent rate on 300,000 pounds, which Cairo has to pay more than Paducah, would amount to \$60.00. The Cairo rate to Chicago is one cent less than Paducah, so that Paducah would have to pay on 100,000 pounds of lumber out, if it were green, \$10.00 more than Cairo. The difference between the \$60.00 which Cairo pays in on the logs and the \$10.00 which Paducah pays out on the lumber would amount to \$50.00. \$50.00 on 100,000 pounds would amount to a rate of 5 cents per 100 pounds.

Mr. Ducker: That is the advantage that Paducah has, is it?

Mr. Carter: That is the advantage of 5 cents per 100 pounds on material such as Mr. Sherrill is using.

Mr. Ducker: That is all.

190 Cross-examination:

Mr. Norman: You do not think that is right, do you?

Mr. Carter: I do not think so.

Mr. Norman: I do not either.

Mr. Wright: I have no questions.

Examiner La Roe: That is all.

(Witness excused.)

F. M. DUCKER was called as a witness, and, having been duly sworn, testified as follows:

Direct examination:

Mr. Ducker: I am Traffic Manager of the Cairo Association of Commerce and would like to file my Exhibit Number 1, a statement showing the number of cars received by rail, the number of cars shipped out by rail and the number of cars received off the river by 16 representative lumber concerns doing business in Cairo, for the year 1913.

(The statement, consisting of one page, so offered and identified, was received in evidence and thereupon marked Intervenors' Exhibit 1, Witness Ducker; received in evidence May 24, 1915, and is attached hereto.)

Mr. Ducker: I would also like to file as my Exhibit Number 2 a statement similar to my Exhibit Number 1, showing the same information, covering the period 1914.

(The statement, consisting of one page, so offered and identified, was received in evidence and thereupon marked Intervenors' Exhibit 2, Witness Ducker, received in evidence May 24, 1915, and is attached hereto.)

191 Mr. Ducker: This statement shows the number of cars received inbound to Cairo proper by rail and the number of cars received inbound to Cairo proper off the river; the number of cars outbound from Cairo proper by rail, and the number of cars outbound from off the river for beyond, and the number of cars reconsigned at Cairo for points beyond, showing a total number of cars handled as 62,044.

A little explanation I would like to make with reference to this statement: It does not cover the Illinois Central tonnage which is reconsigned at Mounds, nor does it include the Iron Mountain or St. Louis Southwestern tonnage.

That is all I have.

Examiner La Roe: Cross examine.

Cross-examination:

Mr. Norman: Mr. Ducker, that milling in transit rate on logs of 2 cents per 100 pounds, I will ask you if that rate was not one cent per 100 pounds until about a year ago when the Commission, in the case of Metropolis Commercial Club held that it was an undue discrimination to charge Metropolis 2 cents when they were only charging Cairo one, and ordered the discrimination removed, and that as the result of that, your rate was for the first time made 2 cents?

Mr. Ducker: That is correct.

Mr. Norman: These exhibits that you have filed here show that Cairo does quite an extensive lumber business, does it not?

Mr. Ducker: Yes sir.

Mr. Norman: Now do you suppose the lumber business done by Cairo compares with the lumber business done by Paducah, or have you any way of forming an estimate?

Mr. Ducker: I have no way of forming an estimate other than to state I would judge it was larger.

Mr. Norman: Very much larger, is it not?

192 Mr. Ducker: Considerable, I think.

Mr. Norman: Do you not think that is due to the rate adjustment that now exists, and especially to the rate adjustment that has existed in the past?

Mr. Ducker: I could not say it is entirely due to rate adjustment. I am not entirely familiar with the conditions at Paducah.

Mr. Norman: Do you know any other reason than the rate adjustment why Cairo should do a larger lumber business than Paducah?

Mr. Ducker: Well, there is a question that the lines that serve Cairo do not serve Paducah from the Southwestern territory.

Mr. Norman: Well, if Paducah had the same rates from that territory it would not make much difference about the lines, would it?

Mr. Ducker: If they had the same rates I do not know as it would; there might be some question then whether they would equal the lumber business of Cairo.

Mr. Norman: That is all I want.

Mr. Haid: Mr. Ducker, is it or is it not a fact that both the Illinois Central and the Mobile & Ohio serve Cairo with their direct rails from the Southeastern producing territory, and the Cotton Belt and Iron Mountain serve Cairo direct with their own rails from the Southwestern producing territory?

Mr. Ducker: That is correct.

Mr. Haid: Is it not a fact, also, that both the Iron Mountain and Cotton Belt for years did not extend east of the river beyond Cairo?

Mr. Ducker: That is true.

Mr. Haid: Cairo was the terminus of those two roads?

Mr. Ducker: That is true.

Mr. Haid: And because of that fact their rates broke at Cairo and Cairo subsequently became a basing point?

Mr. Ducker: That is true.

193 Mr. Haid: And would, in your opinion, that have any influence on the movement of lumber through Cairo, the volume of the movement as against other points where those conditions did not exist?

Mr. Ducker: I think it would, yes sir.

Mr. Haid: Referring to your Exhibits 1 and 2, Mr. Ducker, can you say how much of the lumber shown there moved through Memphis to Cairo?

Mr. Ducker: Moved through Memphis to Cairo?

Mr. Haid: Yes.

Mr. Ducker: I would say from my handling of the statements,

from which these figures here were taken, that there was a very small percentage that moved through Memphis.

Mr. Haid: What statements were these figures taken from, Mr. Ducker?

Mr. Ducker: They were taken from statements filed by the lumbermen.

Mr. Haid: Showing the lumber received by them?

Mr. Ducker: Yes, showing the lumber received.

Mr. Haid: Have you had occasion to notice any of the expense bills, freight bills, way-bills or the bills of lading on the lumber received by the various Cairo people from Southwestern territory?

Mr. Ducker: I have.

Mr. Haid: And have you, in that way, been able to observe what proportion of the lumber moves through Memphis and what proportion over the direct lines to Cairo?

Mr. Ducker: Well, I could not state the proportion.

Mr. Haid: Of course I do not mean to ask you what proportion does, but whether the proportion through Memphis is large or small as compared with the movement over the direct rails.

194 Mr. Ducker: I should say the proportion through Memphis was small.

Mr. Haid: Would you say it was insignificant as compared with the movement over the Iron Mountain and Cotton Belt direct to Cairo?

Mr. Ducker: Well, I would not want to say insignificant, because I would want to see the figures. My observation is, that it is small; that is what I would say from the expense bills I have had an opportunity to examine.

Mr. Haid: Now does this statement include the lumber and logs moving into Cairo and there reconsigned, or does this only cover the movement into Cairo for remanufacture or local consumption?

Mr. Ducker: Well, now, when you come to local consumption, that is another question. The local consumption in Cairo as far as lumber is concerned, is confined, you might say, practically to yellow pine. There is very little hardwood and very little, you might say, of the yellow pine in consideration of the total movement through Cairo that is actually used in Cairo. It is manufactured and re-shipped. Take, for instance, the silo made in Cairo: The silos do not stay in Cairo; they are manufactured in Cairo.

Mr. Haid: But can you say whether or not much of this movement, or any of this movement, shown on your exhibits is lumber and logs which simply pass through Cairo, having been reconsigned en route or after arrival, without being further manufactured?

Mr. Ducker: Why, I could not say what proportion. That would depend entirely on how it was handled. They may have brought a car in there and paid the freight on it and then, without ever unloading it, may have forwarded it on *an* another bill of lading and made practically two shipments of the car.

Mr. Haid: And that would only be done where the car was consigned to Cairo and subsequently sold before being unloaded?

195 Mr. Ducker: Yes; sold before being unloaded.

Mr. Haid: But if it was intended to be sent through originally, that method would not have been followed?

Mr. Ducker: No sir; the total movement shown here, you might say, is insignificant to the total movement through Cairo.

Mr. Haid: That is all.

(Witness excused.)

Mr. Norman: I want to recall Mr. Craig to ask him a question that I failed to ask him. It will not take but a minute.

C. W. CRAIG was recalled for further examination, and, having been previously sworn, testified as follows:

Direct examination:

Mr. Norman: Mr. Craig, you heard Mr. Leigh's testimony about the removal of the eLigh Banana Case Company from Paducah to Cairo. I will ask you whether or not, as Secretary of the Board of Trade, you made any effort to prevent them from going, and have made any effort, to get them to come back?

Mr. Haid: I object to that, Mr. Examiner. That is not material here unless he has some personal knowledge as to why they left here. That is not material.

Examiner La Roe: Answer the question.

Mr. Norman: Do you know why they left?

Mr. Craig: I know why they left, yes.

Mr. Haid: Well, how do you know?

Mr. Craig: Shall I answer your question?

Mr. Norman: Yes.

196 Mr. Haid: I object, Mr. Examiner, unless he is able to show that he has some reliable information on the subject. His mere statement that he knows is not sufficient. We want to know how he knows, how reliable his testimony is.

Mr. Norman: Did you have any conversation with Mr. Leigh about it?

Mr. Craig: I did. I had the matter up with Mr. Leigh in Chicago, and he made a trip down here, in fact two trips, and went over this rate relation with me personally, and through the Board of Trade we have secured an option on a piece of property here for him to buy in case the rate adjustment is made satisfactory so he can move back to Paducah. I still have property under option here for him.

Mr. Norman: Does he say he will move back?

Mr. Craig: He will move back as soon as this rate adjustment is made.

Mr. Norman: The same to Paducah as to Cairo?

Mr. Craig: Yes sir; so he can do business in Paducah.

Mr. Norman: That is all.

Cross-examination:

Mr. Haid: His object, then, is, Mr. Craig, to close up the Cairo plant and move it to Paducah?

Mr. Craig: Well, Mr. Leigh formerly lived in Paducah, and his brother is here, and he was anxious to put the plant here under the supervision of his brother, and he wants to move back to Paducah. It is higher ground and more satisfactorily located for a factory of that kind if the rate adjustment was the same; but with a 6-cent rate against him here it was impossible for him to maintain an industry in Paducah.

Mr. Haid: Do you know any other plants which would likely leave Cairo and move to Paducah if Paducah was given the same rates as Cairo?

Mr. Craig: I do not. We are not trying to depopulate Cairo; very far from it.

Mr. Haid: That is all.

(Witness excused.)

J. D. WATSON was called as a witness, and, having been duly sworn, testified as follows:

Direct examination:

Mr. Haid: Will you state your name, please, and occupation?

Mr. Watson: J. D. Watson; Assistant Freight Traffic Manager St. Louis Southwestern Railway, St. Louis, Missouri.

Mr. Haid: Mr. Watson, how long have you been engaged in the railroad business?

Mr. Watson: About 35 years.

Mr. Haid: In what territory?

Mr. Watson: In Arkansas, Louisiana and Missouri.

Mr. Haid: And with what companies have you been connected during the 35 years in your service?

Mr. Watson: Iron Mountain and Cotton Belt.

Mr. Haid: Mr. Examiner, in order to save time I am going to ask Mr. Watson to hand to the reporter two copies of each of the Exhibits which he intends to offer, and which will be numbered from 1 to 9 inclusive.

This Map will be Number 1.

(The Map in question, consisting of one page, so offered and identified, was received in evidence and thereupon marked Defendant's Exhibit Number 1, Witness Watson, received in evidence May 24th, 1915, and is attached hereto.)

Mr. Haid: Mr. Watson, are you familiar with the original adjustment of rates from the Southwestern lumber producing territory to Cairo, and, if so, will you please describe the manner of operation of the lines serving Cairo at that time, and under what conditions the rates were established?

Mr. Watson: The original rates to Cairo from west of the Mississippi River were established by the St. Louis, Iron Mountain & Southern, then the Cairo & Fulton Railroad, and the Cotton Belt was subsequently constructed and met the rates in effect from the same territory as is served by the Iron Mountain.

Mr. Haid: Now, state right there, Mr. Watson, what the Cairo &

Fulton Railroad was, and how the Cotton Belt operated into Cairo when it was constructed.

Mr. Watson: The Cairo & Fulton Railroad was the original line of the Iron Mountain through Poplar Bluff to Cairo, and South from Poplar Bluff to Fulton and subsequently to Texarkana. The Cotton Belt was constructed in 1884, in that particular territory and operated to Cairo by transfer boat from Bird's Point. Subsequently, or a few years ago, the river was pretty *cut* on the west bank so as to force the abandonment of the west side incline, and it was necessary to abandon that crossing, and since that time it has been necessary for the Cotton Belt and the Iron Mountain to handle their business to Cairo through Thebes.

Mr. Haid: Now you say, Mr. Watson, the Cotton Belt operated at that time to Bird's Point and then reached Cairo by ferry from Bird's Point?

Mr. Watson: Yes sir.

Mr. Haid: How did the Iron Mountain operate from Poplar Bluff to Cairo?

Mr. Watson: In the same identical manner, to Bird's Point, and by car ferry to Cairo.

Mr. Haid: Then, the Iron Mountain extended, did it, from Dexter, Missouri, to Bird's Point, Missouri, as shown by the pencil line which has been inserted on your Exhibit Number 1?

Mr. Watson: Yes sir, it did.

Mr. Haid: And operated from Bird's Point to Cairo by ferry, as did the Cotton Belt?

Mr. Watson: That being the original line in operation.

Mr. Haid: And that was the northern terminus of the line of the Cotton Belt at that time, was it?

Mr. Watson: It was, and was for many years the northern terminus of the Cotton Belt.

Mr. Haid: And the rates at that time were made to Cairo only, and traffic moving beyond took the local rates beyond. There were no through rates, were there?

Mr. Watson: There were no through rates excepting those through rates that were constructed by the use of the combined locals.

Mr. Haid: And the revenue accruing on the Cotton Belt or traffic moving from the Southwestern lumber producing territory to Central Freight Association territory, for instance, was limited to the amount of the local rate to Cairo.

Mr. Watson: To the local rate which was also the proportional rate, and an exceptionally low rate for the service performed.

Examiner La Roe: It is yet, is it not?

Mr. Watson: That is the present method of constructing the rate.

Mr. Haid: Now, under what conditions was that rate originally established? Were there any competitive conditions which entered into the making of that rate.

Mr. Watson: There were a good many competitive conditions that entered into that rate adjustment, not only the river competition which it was found necessary to meet on

account of the location of mills along the river and on movement of their traffic by river, but the fact that the territory in which this lumber must be sold, there being a very small consumption at Cairo, being served from other districts where the competition was very strong, and in order to reach these consuming points where furniture and such articles are manufactured, it became necessary to establish very low rates, which, in conjunction with the rates north of Cairo, would establish a through rate that would enable them to sell the lumber in the northern territory. Further than that, there were prejudices against this western lumber. The people in the North did not want western hardwood lumber, for example, and when yellow pine was started, its competition was white pine and yellow pine being considered the heart of the white pine, it was found difficult to induce builders to use it, and, for that reason and the other competitive reasons mentioned, it became necessary to establish very low rates in order to move this Western lumber—to start it moving.

Mr. Haid: This testimony, Mr. Watson, has all been gone into in I & S Docket Number 520 so you need not go into the detail.

Will you outline briefly, if you can, what prejudice, if any, existed against the hardwoods of the Southwest?

Mr. Watson: Well, the principal prejudice that existed against the hardwoods was the fact that the manufacturers who wanted wood to take a high finish stated that they could not give that finish to the Western hardwood; that the timber was not of a character that would take the highest finish, and, for that reason, they did not want to use it, preferring to use the hardwood timbers from Kentucky and Tennessee and Southern Indiana and the Michigan hardwoods; in fact, anything north of the Ohio River seemed to be a better grade of timber, according to their idea at that time, than the timber West of the river, and it has only been of late years that it has disappeared.

Examiner La Roe: The low rate that you speak of that was put in to move the lumber to Cairo was not the present rate, was it?

Mr. Watson: No; there is very little difference between that rate and the present rate.

Mr. Haid: Mr. Watson, will you refer to your Exhibit Number 2 and show what rates were established in 1898, and how they compare with the present rates, stating, first, where the original development of the hardwood production began, what the rates were at that time, and what the rates from those points are at the present time?

(The statement in question, consisting of one page, so offered and identified, was received in evidence, and thereupon marked Defendant's Exhibit Number 2, Witness Watson, received in evidence May 24th, 1915, and is attached hereto.)

Mr. Watson: The original production of hardwood lumber on the St. Louis Southwestern Railway and the Iron Mountain was in the so-called southeast Missouri district, that is, the district south and west from Cairo, and west from the Mississippi River.

The rate from Malden, Missouri, for example, which was in the

Southeastern Missouri territory, almost on the State line to Cairo, in January, 1888, was made 9 cents. That was found too high and was reduced in January to 7 cents.

Mr. Haid: Mr. Watson, just a minute: In referring to these rates which you say are too high, I will ask you this question, and then you can proceed with your Exhibit: I will ask you whether or not after the rates were originally established, as you say, on a low basis, it was necessary to still further reduce the rate on some

of the timbers in order to overcome the competition and the
202 prejudice which existed against the Southwestern hardwoods.

Mr. Watson: That is a fact, and the records as shown by Exhibit Number 2 indicate that very clearly.

In 1895 the carriers undertook to advance that rate. You will observe the rate was 8 cents at that time. In 1900 the rate was 8 cents on certain kinds of lumber, but it was found necessary to reduce the rate on other kinds of lumber to 6 cents.

The rate on gum and cotton wood from Malden to Cairo on January 1st, 1900, became 6 cents per hundred pounds. In 1905 they undertook to advance that rate half a cent, and in 1910 they undertook to establish the same rates on cotton wood, gum and other kinds of lumber, and that rate continued in effect up to the present day.

Mr. Haid: And that is the same rate established in 1888?

Mr. Watson: That was the same rate as was originally established to move that particular traffic.

Mr. Haid: You need not go into any further details, Mr. Watson.

Mr. Watson: I only picked out the first one on the top line; the remainder show for themselves.

Mr. Haid: And these figures shown on your Exhibit Number 2 are taken from the tariffs on file with the Interstate Commerce Commission and the numbers of the tariffs are stated at the tops of the Exhibit, are they not?

Mr. Watson: That is true.

Mr. Norman: Are any of these points in the territory here involved?

Mr. Haid: Yes.

Mr. Watson: Yes; the territory here involved is south of the line of the Rock Island from Memphis to Little Rock. The Rock Island crosses the Cotton Belt at Brinkley, Arkansas, just below Clarendon, and every station below Clarendon is shown on the Exhibit.

203 Mr. Haid: Take Clarendon — What was the rate in 1888, and what is the present rate?

Mr. Watson: In 1888, 12 cents per hundred pounds; the present rate is 11 cents per hundred pounds, and the rate under suspension in I & S Docket Number 520 is 13 cents per hundred pounds.

Mr. Haid: And that 13-cent rate is the same rate that was in effect in 1890, is it not?

Mr. Watson: It is the same rate that was in effect in 1890, yes.

Mr. Haid: Now, subsequent to the establishment of these rates to Cairo originally, was any other competition encountered which has kept these rates below what you consider a remunerative basis?

Mr. Watson: Yes; since these rates were originally established the lines east of the Mississippi River have maintained a very low rate adjustment on hardwood lumbers to Cairo, and those eastside rates have made it almost impracticable to put these rates from the western territory upon what we consider a remunerative basis.

Mr. Haid: Now, is that true also of yellow pine?

Mr. Watson: As to yellow pine, it is true — the rate on yellow pine has been continued to Cairo at 16 cents per hundred pounds for a long period beyond the time the carriers felt that the business was sufficiently remunerative to the lumber people to justify an advance in the freight rate.

Mr. Haid: Sufficiently remunerative to whom?

Mr. Watson: Remunerative to the lumber people. In other words, they could find a market for it and receive a fair selling price for the timber, and the rates were originally established to assist them in doing that, and that period of assistance has, we think, largely passed.

Examiner La Roe: How long has the 16-cent rate been in?

Mr. Watson: Since 1903.

Mr. Haid: Has any attempt been made since that time,

Mr. Watson, to increase that 16-cent rate, and, if so, what has kept the Southwestern lines from increasing it to what they consider a proper basis?

Mr. Watson: The rate from the territory East of the Mississippi River has been maintained on the basis of 14 cents from the yellow pine territory served by those lines to Cairo, and, for that reason, it is found impracticable to advance the rate from west of the river any more than it has been advanced in 1903, which was two cents per hundred pounds. In other words, we could not increase the difference without placing the west side mills at a disadvantage as against the east side mills.

Mr. Haid: And that is the reason the Cairo rate has not been increased heretofore?

Mr. Watson: That is the reason the Cairo rate has not been increased heretofore. I want to say in that connection, however, the rate has now been increased, and is now under suspension, and the present rate under suspension is 17 cents per hundred pounds in & S. Docket 520.

Mr. Haid: How does the Cairo rate, both the present rate and the suspended rate, compare with rates to other points equally distant from the Southwestern producing territory.

Mr. Watson: The rate to Cairo is what may be termed a depressed rate, which is also true of the rate to St. Louis; and the rate in any other direction for equal distance would be greater than the rate to Cairo or the rate to St. Louis.

Mr. Haid: Now you have described, Mr. Watson, the original manner of operation of the Cotton Belt and the Iron Mountain into Cairo, and you have stated that the incline at Bird's Point has been washed out by the flood, so that they can no longer use that line until another incline is built. Will you state how they operate into Cairo at the present time?

Mr. Watson: Yes; and I want to make that statement clear to the reason why they cannot put an incline there.

Mr. Haid: Do it in your own way.

Mr. Watson: It is for the reason we have not been able to find a permanent bank that we could put in incline there, but it would only be a short time before we would have to put another one in place of it. In other words, it would be impossible to put the incline on the present caving bank.

Mr. Haid: In other words, that bank is being continually washed away?

Mr. Watson: Yes sir; and while the Government has spent a lot of money in trying to find a bank, they have not succeeded up to date.

To reach Cairo now we move from Malden, as shown by this map, through Illmo, through Thebes, and use other lines to reach Cairo.

Mr. Norman: How many other lines do you go over to reach Cairo?

Mr. Watson: Two, the Chicago & Eastern Illinois and the Illinois Central. Now, under what conditions do you operate over these other lines?

Mr. Watson: Under a trackage arrangement.

Mr. Haid: In other words, you transport the traffic in your own cars with your own equipment, your own power, your own crews.

Mr. Watson: That is true; and into our own terminals, which is under contract, in Cairo.

Mr. Haid: The same as if the track belonged exclusively to the Cotton Belt?

Mr. Watson: Absolutely the same as any other trackage arrangement; the same as we operate into St. Louis.

Mr. Haid: And for what distance do you operate over the 206 tracks of the other carriers?

Mr. Watson: 28 miles from Thebes to Cairo.

Mr. Haid: I think it has been testified, Mr. Watson, that the present basis of rates to Paducah is to add the Cairo rate or local from Cairo to Paducah, speaking now of the rates over the from Mountain and the Cotton Belt.

Mr. Watson: That is the manner in which the rate is now made, and has always been made, and which is the basis used in constructing all rates to points east and north of Cairo.

Mr. Haid: Will you state whether or not it is customary to extend any competitive rates, such as the Cairo rate or the St. Louis rate to points as far beyond as Paducah?

Mr. Watson: It is not; and, as an example of that, by reference to Exhibit Number 3 it will be observed—we have undertaken to show the rate to the stations on the lines from Cairo, the Mobile & Ohio, the Illinois Central and the Big Four.

Mr. Haid: In other words, Mr. Watson, the rates to those points are made the same as the rates to Paducah?

Mr. Watson: In the same identical manner.

Mr. Haid: You add to the Cairo rate the local rate beyond.

Mr. Watson: That is true.

Mr. Haid: And these local rates are set forth on this Exhibit?

Mr. Watson: That is true.

Mr. Haid: We offer that as Exhibit Number 3.

(The statement in question, consisting of one sheet, so offered and identified, was received in evidence and thereupon marked Defendant's Exhibit Number 3, Witness Watson, received in evidence May 24th, 1915, and is attached hereto.)

Mr. Haid: Now will you state what the situation is at St. Louis?

Mr. Watson: That is shown by Exhibit Number 4.

(The statement in question, consisting of one page, so offered and identified, was received in evidence and thereupon marked Defendant's Exhibit Number 4, Witness Watson, received in evidence May 24th, 1915, and is attached hereto.)

Mr. Watson: This shows the territory west from St. Louis.

Mr. Haid: On what lines?

Mr. Watson: On the lines of the Wabash, the Missouri Pacific and the Rock Island.

Mr. Haid: It shows the distances to those stations named from St. Louis and the through rates from the yellow pine blanket, is that correct?

Mr. Watson: To St. Louis as well as to the stations named.

Mr. Haid: And through rates to the stations other than St. Louis are in every instance greater than the through rates in St. Louis.

Mr. Watson: That is true.

Now, the same condition exists at East St. Louis, as is shown by Exhibit Number 5, which shows the rates to points on the Chicago & Alton, the Baltimore & Ohio, the Big Four, Vandalia and the Southern Railway.

(The statement in question, consisting of one page, so offered and identified, was received in evidence and thereupon marked Defendant's Exhibit Number 5, Witness Watson, received in evidence May 24th, 1915, and is attached hereto.)

Mr. Haid: And like the previous exhibit that shows the distance from East St. Louis and the through rates?

Mr. Watson: And the through rates, also the rate to East St. Louis.

Mr. Haid: And the through rate is greater in each instance than the rate to East St. Louis.

Mr. Watson: Yes.

Mr. Haid: Now will you state, Mr. Watson, whether there is a movement of lumber to these points on your Exhibits 3, 4 and 5?

Mr. Watson: We have only selected in making these Exhibits those points where there are lumber yards located.

Mr. Haid: Now, will you state, Mr. Watson, what lines operate from Cairo to the consuming territories transporting this lumber?

Mr. Watson: The Big Four operates direct from Cairo to the consuming territory, and a larger consuming territory than any other one line; the Illinois Central operates direct to the consuming territory on their own rails, both east and west of the Mississippi River, and in connection with other lines to the territory in so-called Central Freight Association territory and Eastern Trunk Line territory.

The Mobile & Ohio operates through East St. Louis in connection with the lines radiating through there to both eastern and western territory.

The Iron Mountain operate direct from Cairo to East St. Louis, and by their own line West, that is, their affiliated line, the Missouri Pacific West, and the lines radiating from both St. Louis and East St. Louis.

Mr. Haid: Now, will you state what the condition is at Paducah, if you know, with reference to the movement of lumber into Paducah from the various producing territories?

Mr. Watson: Well, lumber moving to Paducah from points on the Cotton Belt and points on the Iron Mountain would move via Cairo in connection with the Illinois Central Railroad.

Mr. Haid: Would the movement from the Southwestern producing territory in any case be a one-line movement, as is true with reference to Cairo?

Mr. Watson: No, it would not be, because there is no line 209 serving Paducah that also serves the Western territory.

Mr. Haid: Now, what lines serve Paducah from the Southeastern lumber producing territory?

Mr. Watson: The Illinois Central; Nashville, Chattanooga & St. Louis Railways.

Mr. Haid: Do you know anything about the volume of the movement from the Southeast to Paducah as compared with the volume of the movement from the Southwest to Cairo?

Mr. Watson: I am not familiar with the movement from the Southeast to Paducah, except in a very general way; but it stands to reason that the movement to Paducah would not be anything compared with the movement to and through Cairo.

Mr. Haid: Now, going back a little bit, Mr. Watson, will you say whether or not it is a fact that when the Southwestern lumber producing lines began to operate into Cairo and thus reach the consuming territory north of the Ohio River, both east and west of the Mississippi River, the Southwestern lines also began to compete for their share of the lumber business into that territory through Cairo and established the same rates as were maintained by the Southwestern lines.

Mr. Watson: That is a fact, and in accordance with the current tariff records, as we have developed by a careful examination of the tariffs in existence at that time.

Mr. Haid: Now, would you say whether or not it is a fact that the tonnage of the Southwestern lines at that time was such that it was desirable for them to maintain rates which would enable them to develop this lumber territory and reach the consuming territory?

Mr. Watson: Lumber was practically the only tonnage that the Southwestern lines had to depend upon. They were only opening 210 the territory that had not become an agricultural country, and for a great many years they had to depend on lumber for a very large proportion of their traffic. Even today it represents in the case of the Cotton Belt practically forty per cent of the

entire tonnage; that is, the lumber traffic represents practically 40 per cent of its entire tonnage.

Mr. Haid: Can you state whether, from the railroad standpoint, the competition between the lines serving the Southeastern producing territory and Southwestern territory has been severe or otherwise?

Mr. Watson: It has always been severe.

Mr. Haid: In other words, each is striving to get to the consuming territory all the lumber it possibly can?

Mr. Watson: That is true.

Examiner La Roe: How, then, can you maintain a two-cent higher rate west of the river?

Mr. Watson: It has been done by the mills west of the Mississippi River taking care of the shrink, as they express it. In other words, they have reduced their selling price to an extent sufficient to equalize the freight rate, and they are complaining about it very bitterly.

Mr. Haid: And that is what has prevented the Southwestern lines from making the difference still greater by increasing their rates to a normal basis?

Mr. Watson: That is true.

Mr. Haid: And it was only when the Southeastern lines proposed to advance their rates that the Southwestern lines were able to advance their rates and still maintain the same parity?

Mr. Watson: Still maintain the same parity as far as Cairo proper is concerned.

It is not the intention even now to increase the rate from Southwestern territory to Chicago or Cleveland over the present basis.

211 Examiner La Roe: The reason I asked that question is, that when railroad competition is severe in a case of that kind, it usually happens that one line will meet the rate of the other, and in this case you do not meet the rate of the east side lines; you have a rate two cents higher. I have wondered for some time why it is, if the competition east of the river is as great as you say it is, if the competition east of the river is as great as you say it is, it was not absolutely necessary for you to reduce your rate to the same level west of the river.

Mr. Watson: It was considered suicidal for the west side lines to reduce the rates. In other words, we are not making any money now, and we cannot afford to reduce any rates.

Mr. Haid: Mr. Watson, do you remember and can you state what testimony was submitted in the Wisconsin-Arkansas case, I. C. C. Docket Number 5394 on that question? Do you remember whether or not Mr. Triesler and two other parties who were yard-men testified that the east side mills made their sales based on the west side rates?

Mr. Watson: Well, the lumberman does not need a guardian as a general proposition. He generally gets all he can. And, as we understand it, and as they have very freely testified in all these cases, whenever they find the price is fixed by their competitor, they meet that price, even to the extent of advancing what they would be willing to take above that price to accomplish that result. In other words, the west side people very plainly state that they fix

the price, the east side people meet the price and pocket the difference. I think that is the expression. It is very plain.

Mr. Haid: Was it not also testified in that case by a yard man in Kansas that whether he purchased his lumber from points in Arkansas from which the rate was 17 cents, or whether he purchased it from farther South, from which the rate was 24 cents, the cost was the same to him?

212 Mr. Watson: Yes sir; and it was very frankly stated at the same time it did not make any difference to the lumbermen whether the difference in the rate was two cents or seven cents; he would just as soon pocket the seven cents.

Examiner La Roe: Then, you do not think the testimony given by the gentleman this morning, that the prices quoted to him by the mills west of the river, are generally higher than those quoted by the mills east of the river, is typical?

Mr. Watson: I do not. In fact, I know that it is not.

Mr. Haid: Do you think, Mr. Watson, as testified by the same witness, that the price west of the river is not higher except when the mills west of the river have all the business they can handle and do not care whether they make the sale or not?

Mr. Watson: There is no question about that in the world. There can be no question about it.

Mr. Haid: Mr. Watson, amongst your exhibits is one marked Exhibit Number 6, containing statements of mileage, rates and so forth, established and approved by the Interstate Commerce Commission in various cases. Will you state whether or not you have looked over those cases, and, if so, whether or not the conditions under which those rates were established, or approved by the Commission—or, rather, the conditions under which the freight is transported, is the same or similar to conditions under which freight is transported from this territory to Cairo and Paducah.

Mr. Watson: I have looked over the exhibits and the rates shown therein are fixed or approved or established by the Commission in the same identical territory, with probably one or two exceptions, as the territory of the movement of the yellow pine lumber or the hardwood lumber from territory west of the Mississippi River ' Paducah, Kentucky.

213 Mr. Haid: And those rates are fairly comparable with the rates involved in this proceeding?

Mr. Watson: They are fairly comparable with the rates involved in this proceeding, and show conclusively that the present rate to Cairo is an unusually or an abnormally low rate for the distance the traffic is handled.

(The statement in question, consisting of three pages, so offered and identified, was received in evidence and thereupon marked Defendants' Exhibit Number 6, Witness Watson, received in evidence May 24th, 1915, and is attached hereto.)

Mr. Haid: Mr. Watson, will you state as briefly as possible how the Cotton Belt operates into Memphis, if it does reach Memphis?

Mr. Watson: The Cotton Belt does not reach Memphis with its own rails. Some years ago we acquired a right to use a terminal

in Memphis of the Iron Mountain Railway of Memphis, and at the same time acquired a right or an arrangement with the Iron Mountain railway for the handling of our freight from Fair Oaks to Memphis, and under the present conditions, which have been in effect for a number of years, the Cotton Belt handles the business up to Fair Oaks, and there delivers it to the Iron Mountain; the Iron Mountain hauls it to Memphis and delivers it to the Cotton Belt at Memphis under its contract with the Terminal at Memphis.

Examiner La Roe: You have no trackage rights?

Mr. Watson: We have no trackage rights. Traffic is handled by the Iron Mountain cars and their power from Fair Oaks to Memphis.

Examiner La Roe: And I do not understand you to say any traffic beyond Memphis is handled in that way?

Mr. Watson: It is. All traffic that moves to or through Memphis is handled in that manner.

Examiner La Roe: But it is customary for you to route
214 your traffic through Cairo rather than Memphis, is it not?

Mr. Watson: We would not move anything through Memphis that does not have to go through Memphis, for various reasons.

Mr. Haid: I was just introducing this testimony to show why we do not move the traffic through Memphis and why we do not want to move it through Memphis. That arrangement, Mr. Watson, is just the same as if we had a through rate over two lines to Memphis, with this exception, that we have a station in Memphis, and when the traffic reaches Memphis it is placed at our station so that we can make deliveries and also receive deliveries.

Mr. Watson: In the case of less than carload freight, yes.

Mr. Haid: And, with the other exception, that in addition to paying the Iron Mountain for transporting the traffic from Fair Oaks to Memphis, we must also pay the Memphis bridge toll?

Mr. Watson: That is true.

Examiner La Roe: It is in every sense, then, a two-line haul except for that terminal at Memphis?

Mr. Watson: It is in every sense a two-line haul in any way you want to fix it, except it is a very low differential arrangement from Fair Oaks to Memphis, due to the fact that that line from Fair Oaks to Memphis receives our entire traffic to, from and through Memphis.

Mr. Haid: That arrangement was made, was it not, on the condition that the Cotton Belt deliver a certain minimum tonnage to the Iron Mountain each year and pay on the basis of that minimum, whether they actually delivered the tonnage or not? Is that correct?

Mr. Watson: Yes, and not only that—I think the better expression would be, that we have agreed to deliver them all of our tonnage to, from and through Memphis, and that such tonnage shall not be less than a certain figure.

215 Examiner La Roe: You never can ship anything into Memphis or through Memphis, then, by the Rock Island?

Mr. Watson: No sir; all of our tariffs carry a particular exception on our rates to Memphis, and they do not apply to the Rock Island.

Examiner La Roe: The Iron Mountain gets a division of the through rate?

Mr. Watson: No sir; the Iron Mountain receives a contract charge for the service from Fair Oaks to Memphis. It moves under our own through way-bills to and from Memphis, and they receive the full charge of 3 cents per 100 pounds, or 60 cents for a 60-mile haul, or a cent a ton a mile for their service from Fair Oaks to Memphis. Now, in addition to that, we also pay the Memphis bridge charge.

Examiner La Roe: Which is one cent?

Mr. Watson: Yes.

Mr. Haid: And, like a two-line haul, we can secure no local traffic between Fair Oaks and Memphis, is that correct?

Mr. Watson: That is true. We operate through a tunnel, as it were, from Fair Oaks to Memphis.

Mr. Haid: So it is exactly like a two-line haul except the burden on the Cotton Belt is more severe than a two-line haul?

Mr. Watson: That is so.

Mr. Haid: And operating through Memphis to Paducah would make a three-line haul in every case where the tonnage originates on the Cotton Belt, and where the tonnage originates on a feeder would be not less than a four-line haul to Paducah?

Mr. Watson: Would be three in any case, according to the point of origin of the traffic. That is particularly true in the yellow pine territory, where the traffic might originate on a tap line or one of our connections.

216 Mr. Haid: I presume, Mr. Examiner, it is not necessary for me to ask the witness with reference to the findings of the Commission as to the reasonableness of the Cairo rate, the fact that it is a competitive rate, etc., but the Commission's decisions can be referred to in a brief.

Examiner La Roe: You mean the findings of the Commission, that the rate to Cairo is a competitive rate?

Mr. Haid: Yes sir.

Examiner La Roe: That has been so frequently stated by the Commission that I would not go into that very much if I were you.

Mr. Haid: Mr. Watson, in your opinion is the route via the Cotton Belt through Cairo to Paducah from the lumber producing territory in the Southwest an unreasonable route?

Mr. Watson: No; the mileage through Cairo via the proper route in the event we could use our transfer boat between Bird's Point and Cairo would be less than via Memphis from the yellow pine producing territory.

Examiner La Roe: If you could, but you cannot.

Mr. Watson: Well, the way we have to handle the traffic which we expect to get away from as soon as we can—in other words, we expect to put the incline back as soon as we can find a place to put it, that it will stay there for any length of time—the way

we have to handle it today, the route is not an unreasonable route as against Memphis. In fact, it does not begin to approach what the Commission authorizes us to use, which would be 115 per cent of the route via Memphis. That is clearly shown by Exhibit 7.

(The statement, consisting of one page, so offered and identified, was received in evidence and thereupon marked Defendants' Exhibit 7, Witness Watson, received in evidence May 24, 1915, and is attached hereto.)

217 Mr. Watson: Take the top one, Shreveport, Louisiana: The route to Paducah via Memphis is 505.3 miles. 115 per cent of that distance would be 581.1 miles.

The present distance via Cairo, if we could use the transfer boat from Bird's Point to Cairo, would be 496.5 miles, or about 9 miles less than the mileage through Memphis.

The route we have to handle the business through Thebes is 531.3 miles, or practically 50 miles less than the route we would be authorized to use under the Commission's decision.

Mr. Haid: And only 6 miles more than the route via Memphis?

Mr. Watson: Only 6 miles greater than the route via Memphis.

Mr. Haid: Now, if to this is added the difference in the distance between the Illinois Central from Memphis to Paducah, and the Nashville, Chattanooga & St. Louis from Memphis to Paducah, what would the figures show?

Mr. Watson: The figures would show a difference of about 62 miles greater via Memphis.

Examiner La Roe: Why have you taken that 115 per cent, then? Because of the Commission's Fourth Section ruling?

Mr. Watson: I just did that to show what the Commission would authorize in event we should ask for that permission; they would readily authorize at least 115 per cent. In other words, they consider 115 per cent of the short line route not an unreasonable route.

Examiner La Roe: Under the Fourth Section?

Mr. Watson: Under the Fourth Section. In other words, we could apply via a route 115 per cent of the short line route the same rate as via the short line.

Examiner La Roe: Do you know any case where the Commission has held that 115 per cent does not make a route unreasonably long under the 15th Section?

Mr. Watson: No, I do not; but the question of unreasonableness is rather a question for the Commission to decide, I believe. I do not believe they have decided it.

Mr. Haid: The Commission, Mr. Examiner, have probably not used that percentage, but they have approved routes which are very much more in excess of the short line route than those indicated on this exhibit.

Examiner La Roe: Do you have those in the form of an exhibit?

Mr. Haid: No; but I will refer to them in the brief.

Examiner La Roe: Those mileages, of course, do not take into consideration the constructive mileage of the Cairo bridge, do they?

Mr. Haid: No sir.

Mr. Watson: No; they do not.

Mr. Haid: No constructive mileage for any bridge is taken into consideration in any of these figures, either the bridge at Memphis or the bridge at Cairo, or the bridge at Thebes; simply the actual mileage.

The reason, Mr. Watson, I asked you whether, adding the difference between the mileage of the Illinois Central and that of the Nashville, Chattanooga & St. Louis to the Memphis mileage would make a difference in the figures because the testimony shows that one of the Paducah people routed his traffic by the Nashville, Chattanooga & St. Louis in order to secure, as he stated, a quicker service.

Mr. Watson: The figures that are shown on this Exhibit Number 7 are the short-line distance between the two points. I did not select the long lines, but the short lines.

Mr. Haid: Your answer was, I believe that adding that difference, the Memphis route in every case would be in excess of the route of the Cotton Belt through Cairo?

Mr. Watson: It would be 63 miles in excess of the figures shown here.

Mr. Haid: Will you refer to your Exhibit Number 8 and state what that is?

Mr. Watson: Exhibit Number 8 is a similar exhibit from points on the St. Louis, Iron Mountain & Southern Railway, and the points named on this Exhibit are mill points, that is, points from which lumber actually moves.

(The statement, consisting of one page, so offered and identified, was received in evidence and thereupon marked Defendants' Exhibit 8, Witness Watson, received in evidence May 24, 1915, and is attached hereto.)

Mr. Watson: It shows the distance to Paducah via Memphis, 115 per cent of that distance, the distance via Cairo and the distance via Thebes.

Mr. Haid: Now the distance via Cairo there, Mr. Watson, is the distance in case the transfer boat could be used?

Mr. Watson: Yes.

Mr. Haid: And the distance via Thebes is the distance of that line now operating through Cairo?

Mr. Watson: As the lumber would now move to Paducah, yes. We will take the next one, Lake Charles, Louisiana: The distance to Memphis is 602 miles; 115 per cent of that is 692.3 miles; the distance via Cairo would be 633 miles, provided we could use the transfer boat, and the distance via Thebes is 663 miles, that being the route which would be used at present from Lake Charles to Paducah. It shows that the mileage via Thebes, as the traffic now moves, is 30 miles less than 115 per cent of the actual distance via Memphis.

Mr. Haid: Now will you refer to your Exhibit Number 9, Mr. Watson, and state what that shows?

Mr. Watson: Exhibit Number 9 is an exhibit compiled in the same manner from actual producing points on the Chicago, Rock Island & Pacific Railway, and shows that the distance from Eunice, Louisiana, to Paducah, via Memphis, is 633

miles; 115 per cent of that would be 727.9 miles; and the distance via Cairo, using the west side line, would be 672.6 miles. Because of the fact that with the Illinois Central from Cairo is used the Frisco Line from West Memphis to Bridge Junction, through Chaffee and the Chicago & Eastern Illinois and Mobile & Ohio into Memphis, and with this it shows the distance to Cairo is the same as by Thebes, because the only way the Frisco could get to Cairo would be through Thebes, and shows the total mileage is 672 as against the total mileage via Memphis of 727.

(The statement, consisting of one page, so offered and identified, was received in evidence and thereupon marked Defendant's Exhibit No. 9, Witness Watson, received in evidence May 24th, 1915, and is attached hereto.)

Examiner La Roe: In the Commission's report in the previous case they said something about this constructive mileage of the bridge. What would be your estimate as to what that constructive mileage ought to be?

Mr. Watson: I do not think there ought to be any constructive mileage used in connection with the bridge, because if you use it on one bridge you ought to pick out a few other bridges. For example, we have about nine bridges that are rather expensive bridges on our line. Starting out at Shreveport, you go over one, and starting out from Texarkana you go over another bridge, both cross the Red River, then, at Pine Bluff across the Arkansas River, and cross the White River at Clarendon, rather an expensive bridge, then again at Thebes, rather an expensive bridge; or, if the business moves to Memphis we cross the river at Memphis over an expensive bridge.

Examiner La Roe: Do I understand you to maintain an expensive bridge ought to be disregarded entirely?

Mr. Watson: No, I do not maintain an expensive bridge
221 ought to be disregarded entirely, but if you are going to consider one, I think you ought to consider all of them. I did not consider any of them.

Mr. Haid: In other words, your position is, that whether the route is through Memphis, or whether it is through Thebes, there are a great many bridges to be crossed and re-crossed, and if they are going to consider the constructive mileage of the bridge at Cairo, they ought also consider the constructive mileage of all of these other bridges over which trains must pass on the Memphis route.

Mr. Watson: That is true.

Examiner La Roe: I am afraid you do not understand my question: I thought you were testifying just now as to whether or not the route via Cairo was unreasonable long. Now those other bridges that you speak about, most of them have to be crossed whether you go through Cairo or whether you go some other way?

Mr. Watson: Yes.

Examiner La Roe: And, of course, we assume that making up your rates to Cairo or to Paducah, or any other place, you have taken into consideration those bridges. If you have not, that is your fault, or else it is governed by circumstances over which you had no

control. But my point is, that when we are centering our attention on the length of the route via Cairo, I do not see how you can consistently hold that the bridge should be regarded as not there. I believe there is one case in which the carriers maintaind that bridge ought to be considered as over 100 miles constructive mileage.

Mr. Haid: The west side carriers have never taken that position.

Mr. Wright: The Commission so found in this case.

Mr. Watson: The best evidence is they maintain a rate of 6 cents from Cairo to Paducah, and for equal distance in the opposite direction the same rate. That indicates very clearly the bridge
222 does not cut much ice.

Mr. Haid: Now, Mr. Watson, taking the route which was used by the Leigh Banana Case Company, or whatever they call that, the Rock Island and the Nashville, Chattanooga & St. Louis, in order to ascertain that mileage, you would add to the figures shown via Memphis on your Exhibit Number 9, 63 additional miles, would you not?

Mr. Watson: Certainly.

Mr. Haid: And via that route the mileage would be greater in every case than via Cairo, would it not?

Mr. Watson: It would be.

Mr. Haid: Omitting, of course, the constructive mileage spoken of?

Mr. Watson: Yes sir. The difficulty with these mileage tables as a general proposition, is, that they pick out the short line mileage that fits the circumstances. We picked out the short line mileages in these exhibits in all cases, so that comparison here means the short available route. Now if the short available route is to be met by a long route, that is an entirely different consideration and ought not to be considered in connection with the rate adjustment at Paducah.

Mr. Haid: In other words, your position is, that if a shorter line desires to make a low rate to Paducah, or if the Commission be of the opinion that the short line rate should be a certain amount, they should not force the long lines to maintain that same rate over their long lines.

Mr. Watson: I do not understand they can force the long lines to meet that situation. In other words, they can permit the long lines to meet the competition, but they cannot require them to do so.

Mr. Haid: What would be the effect of establishing a route via the Cotton Belt to Paducah through Memphis? What would be the effect on the revenue of the Cotton Belt?

Mr. Watson: It would mean that we would haul the business for the fun of the thing. In other words, we would pay for the
223 privilege of handling the traffic.

Mr. Haid: Can you submit some point and show just what the revenue of the Cotton Belt would be?

Mr. Watson: Yes; that would not be difficult. Take a point, Winfield, Louisiana, we will say, on the Louisiana & Arkansas Railroad.

The rate from Winfield, Louisiana, to Cairo is 16 cents, assuming the same rate were applied to Paducah, and that we make the very best basis of divisions practicable, we would pay to the Louisiana & Arkansas, which originated the traffic, 7 cents, we would pay to the Iron Mountain 3 cents, we would pay the Memphis bridge one cent. There is 11 cents. We would pay the Illinois Central 6 cents at least, and undoubtedly 7, which is their present basis, and we would pay for the privilege of handling the traffic, as can be readily seen by adding those figures together.

Mr. Haid: So it would cost us 2 cents per 100 pounds for handling that traffic to Fair Oaks?

Mr. Watson: Our service would be from Stamps to Fair Oaks, but we would pay for the privilege of handling it there.

Mr. Haid: That is figuring on the yellow pine blanket rate?

Mr. Watson: That is from that particular point, Winfield. I can select some that would be worse than that.

Mr. Haid: From some nearby point where the rate is less than the blanket, the Cotton Belt would have to pay still more for the privilege of transporting that traffic?

Mr. Watson: -es sir. I have not the tariffs here and cannot tell what the figures are off-hand.

Examiner La Roe: From the hardwood section or from the northern pine section, your haul would be about 10½, would it not?

Mr. Watson: Take Clarendon, Arkansas, say: That is 215 miles from Cairo. The rate to Cairo under the present conditions is 11 cents. If we were to apply that to Paducah and pay the
224 Illinois Central 7 cents, there would be 4 cents left which would just take care of the Iron Mountain arbitrary and the bridge, and we would haul it for nothing.

Mr. Haid: The Examiner asked about the haul: Would the haul be cut in half, or how would it be cut? What is the distance from Clarendon to Fair Oaks?

Mr. Watson: From Clarendon to Fair Oaks the distance would be about 52 miles.

Mr. Haid: So the Cotton Belt would get a haul of 52 miles instead of a haul of 215?

Mr. Watson: Yes; and get that haul of 52 miles and would not get anything for it.

Mr. Haid: Is there anything further you want to say in connection with this case, Mr. Watson?

Mr. Watson: No; I do not know anything further than what we have already presented.

Examiner La Roe: I would just like to ask one question:

Mr. Watson, you just figured out you would handle most of this traffic for nothing. That is predicated on the assumption, is it not, that the Paducah rate would be lowered to the Cairo basis, and there would be no change in the Cairo rate?

Mr. Watson: I predicated that statement upon the fact that the Cairo rate was to be applied to Paducah, and with that a fact, the results would be the figures I have given.

Mr. Haid: Now you have only given, I believe, the figures, Mr. Watson, if the through route were established via Memphis. Now, if the through route were established via Cairo, but the Cotton Belt in connection with the Illinois Central or some other connecting line compelled to maintain to Paducah the Cairo rate via Cairo, what would the result be?

225 Mr. Watson: The result would be a reduction in the Cotton Belt earnings of 6 cents per 100 pounds.

Mr. Haid: And why?

Mr. Watson: Because we would have to pay 6 cents per 100 pounds for the movement of the freight from Cairo to Paducah.

Mr. Haid: And the highest revenue, then, the Cotton Belt would receive on any given lumber traffic would be 11 cents for its service to Cairo?

Mr. Watson: If the 17-cent rate is applied to Paducah it will be 11 cents.

Examiner La Roe: You are assuming now that the Illinois Central's division out of that through rate would be its full local, are you not?

Mr. Watson: Well, I do not believe the Commission could find it practicable to reduce the proportion of 6 cents for the Illinois Central, inasmuch as that would be a very low proportion for the service they would be expected to perform.

Mr. Haid: That is not taking into consideration the fact, Mr. Watson, you must pay the connecting lines who originate the traffic?

Mr. Watson: You said the highest revenue the Cotton Belt would get. That was based on the business originating on the rails of the Cotton Belt.

Now, it is a very well known fact that a very small percentage of lumber the Cotton Belt handles originates on its own rails. That is also true of the Iron Mountain.

Mr. Haid: It did originate on the rails of the Cotton Belt at the time these rates were originally established, but not at the present time.

Mr. Watson: That is true; and the rates as originally established have been gradually extended into the lumber producing
226 territory, and over lines other than the Cotton Belt, for which service the Cotton Belt must pay connecting lines that bring it the traffic, as I mentioned, 7 cents from Winfield to Stamps, Nacogdoches, Texas, to Shreveport, and from Dialville, Texas, to Lufkin.

Mr. Haid: Referring again to a movement from Winfield to Paducah via Cairo, you say the division of the originating carrier would be 7 cents?

Mr. Watson: Yes.

Mr. Haid: And the local beyond Cairo is 6 cents?

Mr. Watson: Yes.

Mr. Haid: Making 13 cents, which would leave to the Cotton Belt 4 cents for its service from Stamps, Arkansas, to Cairo, which is how many miles?

Mr. Watson: Stamps, Arkansas, to Cairo is 421 miles.

Mr. Haid: Now, does the originating carrier, as a rule, furnish the empty, or does the Cotton Belt furnish the empty?

Mr. Watson: Well, the originating lines, as a general proposition, are not any better fixed for equipment than the Cotton Belt, and the Cotton Belt has to get the equipment from its Eastern connections down to these other lines, and then they haul it empty from their connection to where it is loaded, and back.

Examiner La Roe: How far is it from Winfield to Stamps?

Mr. Watson: I won't be sure of the exact mileage; it is something over 100 miles.

Examiner La Roe: 7 cents is a large division, is it now, for that haul?

Mr. Watson: Not where they originate the traffic, no sir.

Mr. Haid: What is the rate from Memphis to Cairo?

Mr. Watson: My recollection is, now it is 9 cents. I won't be sure of it.

227 Mr. Haid: 10 cents, is it not?

Mr. Watson: Or something like that.

Mr. Haid: And what is the distance approximately?

Mr. Watson: 165 miles, I think it is, or 167 miles.

Examiner La Roe: Is it the same rate to Paducah?

Mr. Watson: I think so; that is my recollection of it. I won't be sure enough of it to say yes positively.

Mr. Norman: It has been ordered by the Commission, though, to be one cent less than the Paducah rate?

Mr. Haid: Is there anything further you wish to say, Mr. Watson?

Mr. Watson: I do not recall anything further.

Cross-examination:

Mr. Norman: Mr. Watson, as to this traffic your line is an intermediate carrier as to the very large majority if not all of it, no matter whether it is going to Cairo or to Paducah—that is, you do not originate the traffic?

Mr. Watson: Well, as to a large proportion of the movement that goes over our rails to Paducah, I could not say, because I do not believe there has been a great amount of movement to Paducah. As far as Cairo proper is concerned, I would say we originate a large part of the business that goes to Cairo proper. Now, as to the business that moves through Cairo, using Cairo as a base point, that would include all of the lumber traffic that passes over our rails.

Mr. Norman: Well, the traffic that originates south of the Rock Island?

Mr. Watson: Well, we have quite a number of very large mills in there, and when you speak of the movement, you have to take into consideration that the volume is great. We have such mills as

228 Eagle Lumber Company, for example, located on our tracks at Eagle Mills. They expect to be there about 30 years longer.

They cut about 125,000 feet a day. Then we have another one at Thornton, Arkansas, a little larger, and we have another one at Fordyce, Arkansas, about the same size as Eagle Mills. All of them very large plants.

Mr. Norman: You just made a statement that a very large proportion of the movement over the Cotton Belt did not originate on the Cotton Belt; that you had to pay the originating carrier for originating it. That is true, is it not?

Mr. Watson: I stated it, yes, and I am trying to make you understand what that statement really meant: You have taken one angle of it and I am trying to give you both.

Mr. Norman: Then, as to traffic to Cairo, as to a large part of it, it is a two-line haul, and it would be a three-line haul to Paducah. That is true, is it not?

Mr. Haid: Mr. Norman, if you will permit me to suggest there, there is a difference between hardwood and yellow pine.

Mr. Norman: As to who originates it, you mean?

Mr. Haid: Yes.

Mr. Norman: Well, what is that difference?

Mr. Watson: Well, the hardwood originates on the rails of the Cotton Belt, and there is very little of it originates on the side lines. That is the difference.

Mr. Norman: But yellow pine originates on the side lines?

Mr. Watson: As a general proposition, yes.

Mr. Norman: Well, then, on hardwoods in going to Paducah over your line, you would not have to pay an originating carrier 7 cents or anything else, would you?

Mr. Watson: Hardwood originating at Clarendon, Arkansas, no; but hardwood originating at Winfield, Louisiana, yes. Hardwood lumber originating on the Louisiana Navigation Company, yes.

Mr. Norman: But you say most of the hardwood originates
229 on your line?

Mr. Watson: If you want direct information, I will be glad to give it to you, but I do not want to answer a general question. It don't help the record or help you.

Mr. Norman: First, you say you do not originate the major part of your traffic, then you say you do originate the major part of your traffic. Now, as to hardwood, do you or do you not originate the major part of your traffic?

Mr. Watson: The major part of the hardwoods I would say handled over our rails, originate on our own rails; the major part of the yellow pine would originate on the rails of our connections.

Mr. Norman: How long has it been since there was any traffic handled across the river from Bird's Point to Cairo?

Mr. Watson: A little over two years.

Mr. Norman: A little over two years?

Mr. Watson: Yes sir; the bank has been caving about two years. The Government has been working about two years now, trying to find a permanent bank.

Mr. Norman: Has not the Government advised the roads that the bank was all right?

Mr. Watson: Oh, yes, and our engineers have had quite a lot of controversy with the Government as to whether the bank was all right or all wrong. It is our incline, you understand, not the Government's. We are going to build it.

Mr. Norman: Do you think there is any more reason for using that mileage because there used to be a railroad there two years ago than there would be if there had never been one there?

Mr. Watson: If you will take a look at that map right in front of you there, you will observe we have a line that runs from Malden to Bird's Point, and there is quite a lot of business originates 230 right near Bird's Point, East Prairie. In order to handle business from Cairo to East Prairie, we haul that business up to Thebes, 28 miles, and from Thebes down to Malden, which is 68 miles, and from Malden down to East Prairie. We don't do that for fun, and don't get any more money out of it, either.

Examiner La Roe: That does not answer Mr. Norman's question now.

Mr. Watson: I thought it did. I was trying to answer it. I am trying to show him how ridiculous the proposition is. That is the reason I answered it that way.

Mr. Norman: Do you not think it is a ridiculous proposition to figure mileage on a track that does not exist?

Mr. Watson: No, sir, I do not, because we expect, as I said, very frankly and very plainly, to use that as soon as we can find a bank to put it on.

Mr. Norman: You do not know when that will be?

Mr. Watson: No, our engineers told me just a few days ago they had not yet been able to determine.

Mr. Norman: You have been for two years trying to find a bank and have no reasonable ground to believe it will be in the near future?

Mr. Watson: I beg to differ with you; I have ground to believe it will be very soon.

Mr. Norman: What are your reasons?

Mr. Watson: The statement of our Vice-President and General Manager, that he expects to put it back as soon as they can find a place and the engineers are hunting for the place.

Mr. Norman: How long have they been hunting for it?

Mr. Watson: Not very long; about two months.

Mr. Norman: For two years they did not hunt for it?

231 Mr. Watson: Not two years. It required a great deal of work to be done by the Government. Apparently, you do not know much about river work. We operated a transfer over the river for 20 years. I have been working for this railroad 20 years.

Mr. Norman: No, I do not know much about that, but I know you cannot haul traffic where you have not a line, and you figure you have a line there.

Mr. Watson: Yes, sir; and we figure that is the proper route and the route over which traffic should move, and the route over which traffic will move as soon as we are able to put a transfer boat in and handle it.

Mr. Norman: Now about the movement into Memphis off your line: That traffic is billed through by your line, is it not, without the

Iron Mountain appearing in it at all, so far as the shipper is concerned?

Mr. Watson: So far as the shipper is concerned, he is not interested in who handles it between Fair Oaks and Memphis. We pay all the bills; he does not.

Mr. Norman: And the Iron Mountain does not care?

Mr. Watson: No sir.

Mr. Norman: They are handling it as your agent?

Mr. Watson: They are handling it for us, for which we pay a fixed arbitrary for the service they perform, as I have just explained.

Mr. Norman: And they do not handle it for part of the through rate?

Mr. Watson: No.

Mr. Norman: Is there going to be an Iron Mountain man on the stand?

Mr. Wright: Yes.

Mr. Norman: I believe that is all.

232 Redirect examination:

Mr. Haid: Mr. Watson, speaking of the hardwood originating on the line of the Cotton Belt, that hardwood originating on the line of the Cotton Belt originates, does it not, in the northern part of the producing territory from which the rates are very much less than the rate on the yellow pine which originates on the connecting lines?

Mr. Watson: Well, the rates divide about the Arkansas River. That is shown on the map here as just North of Pine Bluff, and of Little Rock. Now, North of the Arkansas River the rates graduate and become less as you get nearer to Cairo. Just South of the Arkansas River the hardwood rates are graded into the yellow pine basis.

Mr. Haid: So that, deducting from the one line rates to Cairo the local which you have to pay to the Illinois Central for the transportation beyond Cairo to Paducah, leaves you probably no more revenue than you receive from the yellow pine traffic which originates on connecting lines.

Mr. Watson: In some cases it would not give us as much. We will take Clarendon, for example. Clarendon is 215 miles from Cairo, and the rate from Clarendon to Cairo today is 11 cents; under I. & S. Docket 520 it will be 13 cents. Now, assuming that the rate of 13 cents will be approved, which is the maximum basis we could have in operation, and we paid 6 cents per 100 pounds out of that, it would leave 7 cents for our 215-mile service from Clarendon to Cairo, and I do not know of any rate of 7 cents for similar service anywhere in this Western territory.

Examiner La Roe: Mr. Watson, there was some discussion in the previous case as to what the natural route was for this traffic, whether it was through Cairo or through Memphis, and I believe the Commission reached the conclusion—I admit the carriers say there was no basis for it on that record—but they reached the conclusion

233 that the natural route, or at least the short line route, was through Memphis. The defendants have said that the natural

route is through Cairo. Is there any reason, from the point of view of the Cotton Belt, for considering the Cairo route the natural route other than the fact that it gives your line the long haul?

Mr. Watson: Yes; because the mileage is shorter via Cairo than it would be via Memphis, as soon as we can use the route which Providence has provided we cannot use under the present conditions, then the route will be shorter through Cairo to Paducah than the route through Memphis.

Examiner La Roe: Is it fair, then, to say that the only objection you have to the Commission's finding, and the only criticism you have of it, is, that the fact is that the route through Cairo is not unreasonably long?

Mr. Watson: That is one, and another is, that in the event the Cotton Belt should be required to establish the same rate to Paducah as to Cairo, it would, in our opinion, place us in a position of discriminating against a great many other points similarly situated for equal service.

Examiner La Roe: Yes; I think you have made that clear in your exhibits which show that the rates are made on combination.

Mr. Watson: Yes.

Mr. Haid: And does it not also involve this point, Mr. Watson, that the Commission would be compelling us to ignore the competitive conditions under which that Cairo rate has been established and is maintained?

Mr. Watson: It would undoubtedly.

Mr. Haid: And also the point that it would be to deprive Cairo of the advantage of its natural location, and give to Paducah an advantage which it is not naturally entitled to?

Mr. Watson: That is our view, yes.

Examiner La Roe: That is all.

234 Mr. Haid: Now, following up the Examiner's line of questioning, in referring to the Cairo route again, would you not also make this distinction, that through Memphis shipments moving via the Cotton Belt would, in every case, be a three-line haul, whereas, through Cairo there would be one line less?

Examiner La Roe: Well, under Section 15 of the Act, Mr. Haid, does not make any difference if it is a 17-line haul, or from the shipper's point of view, or from any other point of view. It is a short haul, and the other is unreasonably long.

Mr. Haid: We have two questions here, one as to the reasonableness of the rate and one as to whether or not we are entitled to the maximum haul.

Examiner La Roe: Well, of course, Paducah and Cairo could be equalized as well by raising the rates as by lowering them.

Mr. Haid: That is true, but that would be to compel us to ignore the competition and give up all of the traffic to Cairo, because we could not get the traffic if the rates were increased and the other lines did not also increase both east and west of the river.

Mr. Watson: In other words, a maximum difference of 2 cents is as much as the mills can stand. That means on yellow pine

lumber 50 cents a thousand feet; in hardwood lumber it means a great deal more.

Examiner La Roe: That has been gone into pretty fully in I. & S. 520.

(Witness excused.)

235 J. E. JOHANSON was called as a witness, and, having been duly sworn, testified as follows:

Direct examination:

Mr. Haid: Will you state your name and occupation, please?

Mr. Johanson: J. E. Johanson; General Freight Agent Chicago, Rock Island & Pacific Railway, of Little Rock, Arkansas.

Mr. Haid: Have you with you, Mr. Johanson, an Exhibit showing the lines of the Rock Island Railway, and particularly those in Louisiana and Arkansas?

Mr. Johanson: Yes sir.

Mr. Haid: Will you please offer that as your Exhibit Number 1?

(The Map, so offered and identified, was received in evidence and thereupon marked Defendants' Exhibit 1, Witness Johanson, received in evidence May 24, 1915, and is attached hereto.)

Mr. Haid: Mr. Johanson, will you describe the line of the Rock Island Railway over which lumber is transported from Arkansas and Louisiana to Cairo and to Paducah, and explain the conditions under which traffic is transported from the Arkansas-Louisiana lumber producing territory to Cairo?

Mr. Johanson: This map that I have just introduced, Mr. Haid, just shows the location of the Rock Island lines. I have another map here, a map of the State of Arkansas which better illustrates that situation.

Mr. Haid: Will you introduce that, then, as your Exhibit Number 2?

Mr. Johanson: Yes sir.

(The map, so offered and identified, was received in evidence and thereupon marked Defendants' Exhibit 2, Witness Johanson, received in evidence May 24, 1915, and is attached hereto.)

236 Mr. Johanson: This map, in connection with Exhibit Number 1, shows the location of the Rock Island lines, on Exhibit Number 2 being shown in blue our line terminating at Memphis.

The purpose of this Exhibit is largely to show the competitive conditions under which the Rock Island operates in Arkansas. You will observe that for the first 45 miles, say, up to Forest City, we are parallel with the lines of the Iron Mountain Railroad who have lines on either side.

The logs that go into the manufacture of lumber in this territory come from the woods tributary to the Iron Mountain as well as to the Rock Island.

Mr. Haid: Mr. Johanson, on that map the Rock Island westward from Memphis is shown in dark green line, is it not, and the Men

this branch of the Iron Mountain operating westwardly from Memphis and the Marianna branch of the Iron Mountain operating southwestwardly from Memphis are shown in red lines?

Mr. Johanson: Yes sir.

Mr. Haid: All right, go ahead.

Mr. Johanson: I may be color-blind, but I thought the Rock Island was blue.

Examiner La Roe: It is.

Mr. Johanson: In addition to being in competition with the Iron Mountain in this territory we are also in competition with the Frisco by reason of the St. Francis River.

Mr. Haid: Mr. Johanson, suppose you start at the first competitive point west of Memphis and just follow your line through, stating at what points you must meet competition of the other west side carriers and in what way that competition affects the Rock Island.

237 Mr. Johanson: All right, starting at Heth, about half way between Memphis and Forest City, there is a short-line railroad which connects with the Iron Mountain at Earle. The traffic coming off of this short line is competitive between the Iron Mountain and the Rock Island.

There is another line just west of that paralleling that short line which connects with the Rock Island at a point shown on the map as Black Fish. The same situation applies to that line.

The next competitive point is Madison, Arkansas, on the St. Francis River.

Mr. Haid: Now, Mr. Johanson, before you go any farther, those two lines you have referred to are shown in, I presume you call it, orange color running northwardly from the Rock Island line to the Iron Mountain line, is that correct?

Mr. Johanson: That is correct.

Mr. Haid: And the Rock Island there must meet the direct one-line rate of the Iron Mountain to Cairo if it expects to get any of the business from points located on those short lines?

Mr. Johanson: Yes sir.

Mr. Haid: All right, go ahead.

Mr. Johanson: At Madison, Arkansas, is quite a large mill and all of the logs manufactured at that point come down out of the St. Francis River, some of the logs being floated down the river from as far North as Marked Tree on the Frisco, which is their intersection with the St. Francis River, the Frisco being shown in green.

The next competitive point is Forest City. There are three large hardwood mills at Forest City, our competition there being with the Iron Mountain direct line.

The next competitive point is Wheatley, in connection with the Missouri & North Arkansas. There is no mill at Wheatley.

238 At Brinkley there are a number of stave plants, and at that point we compete with the direct line of the Cotton Belt, as well as the Iron Mountain, which is not quite so direct. The next competitive point going north from Brinkley is Cotton Plant, which is also served by the Missouri & North Arkansas. There are a number of mills at Cotton Plant, and the Missouri & North Ar-

kansas handles this business via Kensett, and the Iron Mountain via Fargo and the Cotton Belt, or they can handle it via Helena and the Yazoo & Mississippi Valley; but the more direct line is through the Iron Mountain and the Cotton Belt.

The next competitive point is Jelks. There is no mill at Jelks.

The next competitive point going north is at Newport, which is a junction joint with the Iron Mountain, the direct line to Cairo.

It is not shown on the map, but there is another point on our line just north of Newport known as Jacksonport. Jacksonport and Newport are competitive points on lumber coming from the White and Black Rivers, which meet at Jacksonport, the Black River running due north and the White River running west.

There is quite a lot of lumber that is floated down the Black and White Rivers which comes to either the Rock Island at Jacksonport or the Iron Mountain at Newport.

Mr. Haid: Do you now also cross the White River at De Vall's Bluff?

Mr. Johanson: Yes sir, I am coming to that.

Our next competitive point is Devall's Bluff, and in connection with that Des Arc, which is immediately north of De Vall's Bluff. Both of those towns are located on the White River, and all of the lumber manufactured at those two towns comes from logs floated down the White River.

Here, we are in competition with Negro Hill, or Georgetown, on the north, which is reached by the Missouri & North Arkansas; 239 Augusta, reached by the Iron Mountain, and again Newport farther north. We are also in competition with Clarendon, just south of De Vall's Bluff, reached by the Cotton Belt and the Iron Mountain, the Cotton Belt being the direct line to Cairo.

Our next competitive point is Higginson and Searcy, northwest of De Vall's Bluff. There is a mill at Searcy, none at Higginson. The direct line at Searcy is via Kensett and the Iron Mountain. There is also another line via Fargo and the Cotton Belt using the Missouri & North Arkansas from Fargo.

I omitted to state at Des Arc there are some logs floated down from the Little Red River, which crosses the Iron Mountain Railroad at Judsonia.

Immediately north of Kensett our next competitive point is Little Rock, the direct line from Little Rock being the Iron Mountain Railroad, and from Little Rock south to Malvern—

Mr. Haid interrupting: Just a minute, Mr. Johanson. You also meet the Cotton Belt at Little Rock, do you not?

Mr. Johanson: Yes, the Cotton Belt also operates from Little Rock through Altheimer. I mentioned the Iron Mountain especially being the more direct route. From Little Rock down to Malvern our line is parallel with the Iron Mountain, in no case being more than 4 miles away, so that who'e line there, some 45 miles, is directly in competition with the Iron Mountain Railroad.

Going south from Malvern we meet the Cotton Belt at Camden and the Iron Mountain at Camden.

Going south on the other line which goes down from Haskelle, w

meet the Cotton Belt at Fordyce, we meet the Iron Mountain at El-dorado, and the Iron Mountain at Crossett in connection with the Warren & Cuachita Valley Railroad, and the Warren, Jonesville & Saline River Railroad, which are shown in green and orange respectively. We meet the Iron Mountain at Warren.

Going west from Little Rock our line is parrallel to the Iron Mountain the entire distance, the Iron Mountain being located on one side of the river and the Rock Island on the other, except in the extreme western portion of the State the Iron Mountain also have a line on the south side of the river, and we also have the Arkansas Central running as far east as Paris.

The logs manufactured on this line come largely out of the territory located between the river and our line.

Mr. Haid: So that the entire State of Arkansas, at least the portion in which lumber is produced, is a net work of railroads, and each of the railroads is in direct competition with the others, and none can maintain higher rates than the others if they desire to secure any of the traffic?

Mr. Johanson: That is correct.

Mr. Haid: And although the Rock Island does not reach Cairo with its own rails, it must meet the rates of the direct lines?

Mr. Johanson: That is correct; or retire from the business.

Mr. Haid: Is that all in connection with your Exhibit Number 2, Mr. Johanson?

Mr. Johanson: Yes sir.

Mr. Haid: Will you explain the object of your Exhibit Number 3?

Mr. Johanson: Exhibit Number 3—

Examiner La Roe (interrupting): File that first, please.

Mr. Haid: Offer your next exhibit, Mr. Johanson, and state for what purpose it is offered.

Mr. Johanson: Exhibit Number 3 is the same as Exhibit Number 1 in the previous case, I. C. C. Docket 4897, and it is introduced here to make further reference to it.

(The map, so offered and identified, was received in evidence and thereupon marked Defendants' Exhibit 3. Witness Johanson, received in evidence May 24, 1915, and is attached hereto).

Mr. Johanson: This map very clearly shows the direct lines serving Cairo and Thebes, and the competition which the Rock Island meets, which is further illustrated by Exhibit Number 1. It will be observed from this map that the Rock Island, in connection with the Illinois Central, shown in brown, reaches Cairo; the Rock Island, in connection with the Frisco west of the river via Bridge Junction shown in green, reaches Thebes. These are the only two outlets that the Rock Island has in reaching the Cairo-Thebes gateway in competition with the Iron Mountain and the Cotton Belt, shown in blue. That is the only outlet which it has which gives the Rock Island its long haul. At one time the Rock Island did have through routes in connection with the Iron Mountain via Newport and via Higginson and via Little Rock, and in connection with the Cotton

Belt via Brinkley, but these routes have since been abandoned in order to give to the Rock Island its long haul to Memphis.

I have also shown on this map in yellow the route of the Nashville, Chattanooga & St. Louis to Paducah.

In the previous case the Nashville, Chattanooga & St. Louis were not shown as a party. On this map I have also drawn some lines in green. These green lines, which I will describe, show the extent to which the Cairo rate will be extended if the principle followed in the decision in the original case is followed; that is, taking the distance of 170 miles from Memphis to Cairo, and applying that distance to the points within a radius of 170 miles from Memphis, it will extend the Cairo rate from Forest City, made by the direct line of the Iron Mountain to apply to Paducah on the Illinois Central, to a point just east of Leighton on the Southern Railway, to a point just east of Winfield on the Frisco, and to a point just east of Pickens on the Illinois Central just south of Memphis.

242 Examiner La Roe: I do not follow that, Mr. Johanson. Will you explain that to me?

Mr. Johanson: Yes sir.

Examiner La Roe: I follow it on the map, but I do not follow your argument.

Mr. Johanson: The distance from Memphis to Cairo, 170 miles, the distance from Forest City to Cairo is 215 miles, so that the distance is just 215 miles to these various points, or approximately 215 miles to Paducah, to Leighton, to Winfield and to Pickens. Drawing a circle, which will represent a radius of 170 miles from Memphis, will go through those points.

Mr. Johanson: Those points are all equi-distant to Cairo.

Examiner La Roe: Suppose they are.

Mr. Haid: Your argument, Mr. Johanson, is this: that if, as the Commission said in their former decision, because the mileage to Paducah is the same as the mileage to Cairo from Memphis you should carry the same rate to Paducah as to Cairo notwithstanding the competitive conditions existing at Cairo that do not exist at Paducah, then it is proper to draw that same conclusion in all directions?

Mr. Johanson: Yes sir.

Mr. Haid: And that would force you to carry the Cairo rate to Leighton on the Southern Railway; to Winfield, Alabama, on the Frisco and the other points that you have named?

Mr. Johanson: Yes sir.

Examiner La Roe: I do not agree with you, but I see the point now.

Mr. Johnason: Now, applying the same principle to the Frisco, our route from Forest City to Thebes is via Bridge Junction and the Frisco, a distance of approximately 170 miles from Bridge Junction. Now applying the same theory to the Frisco Railroad, it will extend the Cairo rate over to West Plains on their line which diverges from Big Creek. You notice the line of the Frisco runs up to Big Creek and diverges in one direction to Thebes, and in the other direction to West Plains. Now, in this

case we have been asked to apply the same rate to Paducah via the Nashville, Chattanooga & St. Louis. The Nashville, Chattanooga & St. Louis operates through Jackson, Lexington and Hollow Rock up to Paducah, a distance of about 230 miles. From Hollow Rock the Nashville, Chattanooga & St. Louis diverges in three directions, eastwardly to Nashville; westwardly to Hickman, and northerly to Paducah. Applying the same principle here, having established, we will say, a rate to Paducah, whatever it may be, the same principle would make it necessary for the Rock Island to extend the Paducah rate to Hickman on the west and to a point just east of Nashville on the east.

Mr. Haid: West of Nashville, is it not?

Mr. Johanson: Yes; to a point just west of Nashville. It does not quite take in Nashville. Nashville is about 241 miles as against 230 miles to Paducah. In other words, the distance from Hollow Rock to those three points is approximately the same.

The map was not large enough to show how far our that would go on the Southern Railway, but the point on the Southern Railway is east of Sheffield. It takes us to a point within a few miles of Birmingham on the Frisco, and to a point on the Illinois Central, not shown on the map here,—Amite—and applying the same principle to the Frisco, would take us up to Mansfield, Missouri, north of West Plains.

Applying the same principle on the Illinois Central on the north would take us up to Carbondale, which is north of Cairo. So that the Rock Island, by reason of its handling this business through Memphis in competition with the Iron Mountain, might be called upon to establish the same rate to these other points where the same competition does not exist as at Cairo.

Mr. Haid: In other words, your argument is, that if the Commission is to ignore entirely the competitive conditions existing at Cairo, and ignore the fact, as has been found by them, that the Cairo rate is abnormally low, due to those competitive conditions, and fix rates based on mileage alone, with the Cairo rate as a yardstick, that that would go all around into the territories that you have described.

Examiner La Roe: The Commission never held the Cairo rate to be abnormally low, however, have they?

Mr. Haid: They have said so.

Examiner La Roe: They have said it was a competitive rate, but I did not know they had said it was abnormally low.

Mr. Haid: Yes sir; they have.

Examiner La Roe: I beg your pardon, then.

Mr. Norman: I do not object to the gentlemen going as far as they like except in the interest of time, but this is not only argument instead of testimony, but the gentleman himself calls it so. I would like them to confine this to testimony.

Mr. Haid: He has put in his testimony and has said what he is putting it in for, what his object is. That is the reason I used the word argument, to show what he intends to prove by these facts he is putting in.

Now do you know, Mr. Johanson, any reason why, if the Commission is going to ignore the competitive conditions existing at Cairo, and use the Cairo rate as a yardstick to measure the reasonableness of the rates beyond Cairo, why it should not also be used to measure the reasonableness of rates short of Cairo intermediate?

Mr. Johanson: I see no reason why it should not.

Examiner La Roe: Is not your exhibit obviously weak, though,

Mr. Johanson, in all fairness, because it eliminates every
245 factor except mileage?

Mr. Johanson: I will admit it is weak to the extent it does that, but that is the basis on which I understood the Commission's decision to have been made in the Paducah case, and, to that extent only, is it weak. As I understand it, the theory on which this case was decided against the Rock Island, at least, was that the Rock Island distance to Paducah was the same as to Cairo. Now the Rock Island distance to Cairo is the same, if you please, to Winfield, and if you adopt the same principle we will say to Paducah in connection with the Nashville, Chattanooga & St. Louis, as we are now asked to do—in other words, we are now asked to take the Cairo rates extended over to Paducah on the Illinois Central and apply that to the Nashville, Chattanooga & St. Louis, a longer distance. Now, if that is the proper thing to do, then I see no reason why it should not be proper to extend it over to Nashville and again over to Hickman, on the same principle, exactly the same principle.

Mr. Haid: And to answer the Examiner's question, your testimony is introduced for the very purpose of showing that the Commission's decision was weak and erroneous?

Mr. Johanson: Yes sir.

Mr. Haid: In, that they ignored the competitive conditions at Cairo?

Mr. Johanson: Yes sir.

Mr. Haid: Under which that rate was established?

Mr. Johanson: Yes sir. In my testimony in the former case I stated that the basis for all rates—I did not repeat it because it was already incorporated, but I will repeat it now for the purpose of emphasizing this exhibit—the basis for all rates, not only on lumber but on all traffic from points on the Rock Island to points on and
246 south of the Ohio River, is the Memphis combination with the sole exception of Cairo, and where we meet the rate of the Iron Mountain and Cotton Belt direct to Cincinnati, which was fixed by the Commission in the Davis Brothers case.

Now I will say further at this time, which I did not say in that case, that the business that we handle at Cairo in competition with the Iron Mountain and Cotton Belt is the cheapest lumber business that the Rock Island handles via Memphis. Of all the business we handle via Memphis, we make less money on shipments going to Cairo than we do to any other point either north or south of Cairo, or east or west of Cairo. We make more money on Chicago, Cleveland, Detroit, Pittsburgh, Cincinnati, even Cincinnati and Louisville, under the rates fixed by the Commission. This Cairo rate is a depressed rate and the best divisions we can make we have made

with our connections, and we still find it to be the cheapest business we handle. Now we do not feel that we should be called upon to extend that cheap rate, made cheap by the Iron Mountain and Cotton Belt direct lines, to all this other territory.

Mr. Haid: Now, Mr. Johanson, to illustrate what you have said with reference to the competitive conditions under which you maintain the rate to Cairo, will you introduce your Exhibit Number 4?

Mr. Johanson: Yes sir.

Mr. Haid: And make an explanation of it.

Mr. Johnson: Exhibit Number 4 explains the low measure of the rate to Cairo and Thebes, as applied by the Rock Island in connection with the Illinois Central to Cairo, and the Frisco to Thebes, the rates being shown from representative points on the Rock Island east of Little Rock as compared with the rates for corresponding distances over the Illinois Central direct line, and over the Yazoo & Mississippi Valley in connection with the Illinois Central to Cairo.

(The statement, so offered and identified, was received in evidence and thereupon marked Defendants' Exhibit 4, Witness
247 Johanson, received in evidence May 24, 1915, and is attached hereto.)

Mr. Johanson: It is only necessary to explain one point here, otherwise the exhibit is self explanatory:

The distance over the Illinois Central from Memphis to Cairo is 169 miles; Paducah is approximately the same. The circles represent the radius from Memphis, the first circle being 50 miles and the next 75 miles, etc., so that the distance from a point on the Rock Island within the circle is the same as a point on the Yazoo & Mississippi Valley and the Illinois Central. For example, Forest City, approximately 50 miles from Memphis, our rate to Cairo today is 10 cents, the proposed rate under I. & S. Docket Number 520 is 12 cents. Now compare that with Evansville on the Yazoo & Mississippi Valley, a distance 45 miles south of Memphis, and you have the same distance to Cairo as Forest City is to Cairo. The Yazoo & Mississippi Valley carries 13 cents today, with cottonwood and gum 10 cents, and the proposed rate is 14 cents on all kinds under I. & S. Docket 520.

At Sardis, a point on the Illinois Central, a point south of Memphis, the rate is the same, so even our rate is less to Cairo for an equal distance than the Illinois Central's direct line to Cairo.

You will observe that the short-line distance from Forest City to Thebes, which is a corresponding base point to Cairo, is 195 miles.

Mr. Haid: In transporting traffic, for instance, from Sardis to Cairo, it is a one-line haul, is it not, Mr. Johanson?

Mr. Johanson: It is a one-line haul over the Illinois Central.

Mr. Haid: And from Forest City, of course, or any point on your line would be a two-line haul, and in addition to the river crossing at Cairo, the Mississippi River must be crossed at Memphis?

Mr. Johanson: That is right.

Mr. Haid: And the Rock Island pays out of its revenue
248 the bridge toll of one cent per 100 pounds?

Mr. Johanson: That is correct.

Mr. Haid: And what you have said of Forest City applies equally to the other points in the radius of 75, 100 and 125 miles?

Mr. Johanson: Yes sir. Now, as emphasizing this we will take Paducah: The rate as proposed by the Illinois Central from Sardis, Mississippi, to Paducah will be one cent less than Cairo, or 13 cents, on all kinds of lumber. From a point the same distance on the Rock Island to Paducah the rate will be 12 cents, or one cent less than the direct rate of the Illinois Central, which serves both points.

Mr. Haid: Now another point, Mr. Johanson: What are the operating conditions on your line in Arkansas as compared with the operating conditions on the Illinois Central or the Yazoo & Mississippi Valley?

Mr. Johanson: Well, I am not very familiar with the operating conditions on the Illinois Central and Yazoo & Mississippi Valley, but I know we have some very difficult operating conditions on our line, particularly between Memphis and Little Rock.

Mr. Haid: Well, I was referring more particularly now, Mr. Johanson, to the density of tonnage.

Mr. Johanson: Oh, yes. The density of tonnage on our line in Arkansas does not begin to compare with the density of tonnage on the Illinois Central.

Mr. Haid: It is at the most only half the density of the Illinois Central, is it not?

Mr. Johanson: I should say so.

Mr. Haid: Is that all you wish to say with reference to that Exhibit?

Mr. Johanson: I think so.

Mr. Haid: Now, will you introduce your Exhibit Number 5, which also illustrates that the Paducah rates on the Cairo basis would be too low?

249 Mr. Johanson: This exhibit is the same as my Exhibit Number 3 at the former hearing in the case of I. C. C. Docket 5897, brought up to date.

(The statement, consisting of one page, so offered and identified, was received in evidence and thereupon marked Defendants' Exhibit 5, Witness Johanson, received in evidence May 24, 1915, and is attached hereto.)

Mr. Johanson: The lowest row of figures, which is designated "Memphis combination," is what we would consider to be the normal adjustment to Paducah and Cairo, but via the short lines of the Iron Mountain and the Cotton Belt.

Mr. Haid: Just take the first point, Proctor, and illustrate what this exhibit is offered for, and then put the exhibit in without further comment.

Mr. Johanson: The first station there is Proctor and shows the present and proposed rates under I. & S. Docket 520 to Cairo and to Paducah, and the Memphis combination to Cairo and Paducah.

Mr. Haid: The proposed rate shown to Paducah is the rate proposed in I. & S. Docket 520 in compliance with the opinion of the Commission in the former Paducah case?

Mr. Johanson: Yes sir.

Mr. Haid: But is not the rate which you propose to put in if you are permitted to withdraw those rates, is that correct?

Mr. Johanson: That is correct. Now we would consider that the proper adjustment to both Cairo and to Paducah would be the Memphis combination, which would make the rate under the present conditions 15 cents on all kinds of lumber. Under I. & S. Docket Number 520 the Illinois Central have reduced the rate from Memphis to Paducah to 9 cents, which would make the Paducah rate one cent less than to Cairo.

Mr. Haid: So that the combination would be one cent less than the combination you have shown on your Exhibit?

50 Mr. Johanson: Yes sir.

Examiner La Roe: You mean if your line was the only line that reached Cairo?

Mr. Johanson: If our line was the only line that reached Proctor and had no competition at Proctor, our rate would be on the full Memphis combination.

Mr. Haid: To both Cairo and to Paducah.

Mr. Johanson: Yes sir. That is *not* so well illustrated at Proctor, because the Cairo combination there is the same as Memphis combination. If you will take Des Arc, it better illustrates the situation.

The Memphis combination there would be 19 cents today, and under I. & S. Docket 520 the Memphis combination would be 19 cents to Cairo and 18 cents to Paducah, but on account of the rate of the Iron Mountain and Cotton Belt from contiguous territory, particularly river points which are in competition with Des Arc, we are compelled to carry a rate of 11 cents today to Cairo, and that, by reason of the low rate from Cairo to Paducah, makes the rate 16 cents, 3 cents less than the combination.

Now we feel that the rate on the basis of Memphis combination would more nearly approximate what the rate should be in comparison with the rates carried by the Illinois Central from their stations south of Memphis for equal distances.

Mr. Haid: Your position, and that of your Company, is, that, in the absence of competition with the other west side lines, and in the absence of competition with the lines leading from the producing territory east of the river, your rate to Cairo from the lumber producing territory west of the river would be on the full Memphis combination?

Mr. Johanson: Yes sir; as it is to every other point where we do not have that competition.

Mr. Haid: And it is only because of that competition that 251 your rate is less than the full combination?

Mr. Johanson: Yes sir.

Mr. Haid: Mr. Johanson, you have another Exhibit: Will you explain briefly what that Exhibit is offered for?

Mr. Johanson: This Exhibit, Number 6, which is a copy of the testimony of our Assistant General Manager, Mr. A. B. Copley, which was offered in I. & S. Docket 520, we offer in evidence.

(The testimony, so offered and identified, was received in evidence

and thereupon marked Defendants' Exhibit 6, Witness Johanson, received in evidence May 24, 1915, and is attached hereto.)

Mr. Haid: And is offered for the purpose of showing the conditions under which the Rock Island operates into and out of the lumber producing territory west of the Mississippi River?

Mr. Johanson: Yes sir.

Mr. Haid: And indicated that, because of the character of the soil, because of the excessive rainfalls, etc., the cost of operating in Arkansas and Louisiana is about double the cost of operating on any other part of the Rock Island Railway, is not that correct?

Mr. Johanson: That is correct.

Mr. Haid: And also shows the miles of trestle necessary to enable the Rock Island to operate from the lumber producing territory into Memphis?

Mr. Johanson: Yes sir.

Mr. Haid: Is there anything else you wish to add, Mr. Johanson?

Mr. Johanson: That is all.

252 Cross-examination:

Mr. Norman: Mr. Johanson, you said that you got the lowest division on this Cairo business of any traffic which you handle. Will you mind stating what your division is between the Rock Island and Illinois Central on Cairo business?

Mr. Haid: Mr. Examiner, he did not state that. He said it is the cheapest traffic that they handle; that they paid to the connecting line as low a division as they have been able to get the connecting line to consent to.

Mr. Norman: If he has any objection to it, let him say so.

Mr. Johanson: Yes; I object to furnishing it; I have no objection to furnishing the information to the commission, but we do not care to give the information out to the public. We do not feel it is material to the issues of the case.

Mr. Norman: Mr. Johanson, on what do you base your statement that the traffic on the Illinois Central is double the density of the traffic on the Rock Island?

Mr. Johanson: Well, that is based on my recollection of the figures that I have seen in various cases, which figures were taken from the reports of the Interstate Commerce Commission, and in making that comparison I had reference to the density of tonnage on the Illinois Central's Southern lines as compared with the tonnage on the Rock Island lines in Arkansas and Louisiana.

Mr. Norman: Is there a separation of the tonnage in Arkansas and Louisiana in the reports to the Interstate Commerce Commission?

Mr. Johanson: No sir; there is not; but we have made some figures on that in some cases we have had before the Interstate Commerce Commission.

253 Mr. Norman: Does most of the lumber traffic handled by you originate on your line or on connecting lines?

Mr. Johanson: I would say our situation was pretty much the same as the Cotton Belt with respect to the hardwood. On yellow

pine I would say about 90 per cent of the tonnage we handle originates on our connections.

Mr. Norman: But as to the hardwood, the major portion originates on your own line, is that what you mean?

Mr. Johanson: Yes, I suppose about 75 per cent of the hardwood tonnage we handle originates on our own line; possibly not that much.

Mr. Norman: I believe that is all.

Mr. Ducker: Mr. Johanson, did the Rock Island ever carry rates to Cairo from yellow pine territory in connection with the Frisco?

Mr. Johanson: Yes sir.

Mr. Ducker: Do you carry any now?

Mr. Johanson: No sir.

Mr. Ducker: What was the reason those rates were discontinued?

Mr. Johanson: Those rates were established into Cairo by the Frisco during the time the Rock Island and Frisco and Chicago & Eastern Illinois were affiliated lines, and with the separation of those lines, the route via the Frisco to Cairo was abandoned.

Mr. Ducker: And in the movement to Cairo via that route, how many lines would be involved?

Mr. Johanson: Well, at that time we considered there were two lines involved, the Rock Island and the Mobile & Ohio.

Mr. Ducker: Under present conditions?

Mr. Johanson: There is no route that way under present
254 conditions.

Mr. Ducker: That is all.

(Witness excused.)

C. C. P. RAUSCH was called as a witness, and having been duly sworn, testified as follows:

Direct examination:

Mr. Wright: Mr. Rausch, I believe you qualified in the original case 5597, did you not?

Mr. Rausch: Yes sir.

Mr. Wright: Your position at the present time is General Freight Agent of the Missouri Pacific-Iron Mountain System?

Mr. Rausch: Yes, sir.

Mr. Wright: I believe you have been connected with that company upwards of 25 years in a traffic capacity?

Mr. Rausch: I have.

Mr. Wright: Generally familiar with the rates upon that system?

Mr. Rausch: I am familiar, yes sir.

Mr. Wright: You were directly in charge of the making of Arkansas rates, were you not, for a considerable period?

Mr. Rausch: For some years.

Mr. Wright: That is, in so far as the Iron Mountain-Missouri Pacific is concerned?

Mr. Rausch: Yes sir.

Mr. Wright: Now I am going to ask you to go ahead, and with-

255 out repeating, if possible, anything said in the original record, but just briefly state the location of the Missouri Pacific-Iron Mountain lines, your opinion as to whether or not the present rates to Cairo are depressed rates, and, if so, give your reasons, and also as to any data that you may have compiled as exhibits, introduce those as you go along. If I think it is necessary, I will ask one or two questions during the testimony, but will refrain from doing so if possible.

Mr. Rausch: The Interstate Commerce Commission in Volume 16, page 323, Docket 1438, which was a lumber case involving rates on lumber from Arkansas-Louisiana points to Cairo, clearly enunciated to my mind certain cardinal principles.

Examiner La Roe: Is that the Chicago Lumber & Coal Company case?

Mr. Rausch: Yes sir, particularly these:

"Where competitive conditions among shippers are the leading considerations that induce the complaint, the Commission in determining the reasonableness of rates must have due regard to transportation conditions and the rights of the carriers as well as the interests of the shippers."

Now I call particular attention to the conclusion portion namely: "The movement of traffic is encouraged and increased when carriers adjust their charges to meet mercantile interests, equalize the value of commodities in their final distribution."

I take it that what is meant there is all of the competitive features that go to make up the buying and selling of any particular commodity, and particularly in this case, lumber.

Next, "A carrier is not guilty of discrimination because it does not afford as favorable rates as others serving a different territory, though the products carried by them are brought to the same market."

256 Mr. Norman: This is undoubtedly a brief. He is citing cases of the Interstate Commerce Commission, reading their opinions, and making deductions from them, and that is certainly a matter for brief.

Examiner La Roe: The objection is very well taken, but I think Mr. Rausch was simply making this a preface to some facts that are to follow:

Mr. Rausch: That is it.

Examiner La Roe: I wish he would get to the facts and omit the argument.

Mr. Rausch: But to my mind the converse is true where the points of production are common and the points of consumption are different, as in this case, Cairo versus Paducah.

Next, "The law does not deal with carriers collectively as a single unit or system, but its demands are directed to each with respect to the service which it is required to perform."

Now, with that as a preface, I would like to call attention to the fact that the St. Louis, Iron Mountain & Southern Railroad operates primarily and practically exclusively south from St. Louis, from Thebes, from Cairo and Memphis into and out of Arkansas and Louisiana. Aside from the line between Cairo on the south and East

St. Louis on the north, we are essentially a west of the Mississippi River line, but so far as this proceeding is concerned, rates on lumber from Arkansas and Louisiana points to Cairo versus Paducah, we are essentially a west of the Mississippi River line, because only a small part of our line comes into this discussion, and, incidentally, through the routing of the traffic via Thebes, a distance of possibly 26 miles.

Now I am mentioning that so forcibly for the reason I have made some figures as to distances only with respect to our line and the short line north of Memphis, which is the Illinois Central, and the short line east from Cairo, which is likewise the Illinois Central, not
257 confining it to other lines and other routes, but taking my cue very largely in what the Commission said in the decision of the previous Paducah Lumber case as to the additional mileage, for Cairo bridge is 112 miles. I appreciate the fact that the Commission did not say that that mileage was found in this particular lumber case, but simply stated that it had been testified to, in other cases, I presume.

The Iron Mountain, of course, reaches practically all of the so-called lumber producing territory in Arkansas and Louisiana, either with its rails direct or in connection with the short lines who deliver the traffic at the interior junctions. In that respect the haul to Cairo from Iron Mountain points proper is always a one-line haul; the haul to Paducah is a two-line haul. Of course, where the lumber originates on a connecting line, there is the additional line haul in either case. Additional line service entails additional costs, and, therefore, the rate might necessarily be higher, and should necessarily be higher, but so far as these lumber rates are concerned, I believe we should view the matter in the light of the actual competitive conditions that made the rates originally, or as far back as we could possibly go, which basis—it may be some repetition on my part from the previous testimony of something that has been said—but the basis generally from the Arkansas-Louisiana points to all points beyond Cairo, that is, north and east, is on the Cairo combination, and that basis has been in effect for a great many years, and was originally made when both Poplar Bluff and Dexter respectively to Bird's Point and then crossed the Mississippi River by ferry from Bird's Point to Cairo, though subsequently, with the building of the line south from East St. Louis to Thebes and connecting up on the west side, Thebes became the point of interchange and the basing point, so that Cairo and Thebes in that way were placed on a parity.

Mr. Wright: We offer Rausch Exhibit Number 1, covering
258 a statement of mileage.

(The statement, consisting of one page, so offered and identified, was received in evidence and thereupon marked Defendants' Exhibit 1, Witness Rausch, received in evidence May 24, 1915, and is attached hereto.)

Mr. Wright: Now briefly state the purport of that Exhibit, Mr. Rausch.

Mr. Rausch: The purport of this exhibit is to show some what is properly called representative points south of the Arkansas River,

that is south of Little Rock and south of the Rock Island main line from Memphis to Little Rock, on the main line of the Iron Mountain towards Texarkana on the one hand, the main line as far south as Lake Charles, Louisiana, the terminus of the line on the other, showing the short line distance over our own rails to Memphis, the distance to Memphis on the basis of 115 per cent, the actual distance via Cairo to Paducah and the actual distance via Thebes and Cairo to Paducah.

Now, in every case the distance via Cairo is less than the 115 per cent distance via Memphis.

Mr. Wright: You have used that 115 per cent because that is the basis the Commission has laid down in Fourth Section matters, have you not?

Mr. Rausch: Well, the Commission has said in several cases something with reference to this 115 per cent, and in casting around for a basis which one might consider an unreasonable route, it seemed to me this 15 per cent added would be proper to use.

Mr. Wright: Well, that is the basis they first laid down in the Kansas Salt case, where the first Fourth Section Applications were passed on, is it not?

Mr. Rausch: Well, the Commission has laid down the basis several times; I have used it several times; of course, there is nothing
259 ironclad about it.

Mr. Wright: Proceed.

Mr. Rausch: Now, take Benton, Arkansas, for example: The distance via Thebes is 103 per cent of the distance via Memphis, or 12 per cent less than the 115 per cent via Memphis.

Examiner La Roe: Take Snow Lake.

Mr. Rausch: One minute till I get to it.

The distance from Benton via Thebes is 90 per cent of the 115 per cent via Memphis. The distance via Cairo is 96 per cent of the distance via Memphis. The distance via Cairo is 84 per cent of the 115 per cent of the distance via Memphis. Now, before I get to Snow Lake, take Lake Charles, which is at the end of the line: I have just figured out here roughly the percentages and I will read it into the record:

The distance via Thebes is 110 per cent of the distance via Memphis. The distance via Thebes is 96 per cent of the 115 per cent of the distance via Memphis. The distance via Cairo is 106 per cent of the distance via Memphis and via Cairo is 90 per cent of the 115 per cent of the distance via Memphis.

So that in every case practically the distance via Thebes is less than the distance via Memphis, using the additional 15 per cent, and in a great many cases, in nearly all cases, the distance via Cairo is materially less than 100 per cent of the distance via Memphis. In the two cases I have cited the distances are 84 and 92 per cent respectively.

Now, that situation is not exactly true at Marianna, shown on this statement. Marianna is the first important point just west or southwest of Memphis on the Marianna Cut-off. The distance is so short

260 to Memphis that, naturally, it makes lower via Memphis to Paducah than via either Cairo or Thebes, but even using the 115 per cent of the distance from Marianna to Paducah, 251 miles, the actual distance via Cairo is only 2 miles in excess, that is, 253 miles, and, of course, as one proceeds south that is lessened, as indicated by the Lake Charles example.

Examiner La Roe: I do not think you need to comment further on that exhibit. Your Cairo distances there are via the Bird's Point route?

Mr. Rausch: The Cairo distance is used there, and the reason why I used the Cairo distance is this: that the rates are originally made to Cairo on lumber and in effect to Cairo, and as the basis to Cairo for a good many years, up to a very recent time, was over our line from Poplar Bluff or Dexter into Cairo via the transfer. As a matter of fact, even after the transfer was washed out at Cairo—that is, there had been more or less erosion to the banks there from year to year—some time after that took place our company handled considerable traffic from Bird's Point, or a line immediately west of Bird's Point down to Columbus, Kentucky. We have another branch that runs to Columbus, and then we used the ferry from Columbus to Cairo. In fact, there was more lumber handled that way than any other traffic.

Mr. Wright and I had occasion a few weeks ago to go into a Fourth Section matters involving the St. Louis-Columbus-Cairo rates, and the Examiner asked us as to the operating conditions, and we looked into that matter very thoroughly, and found even after the Bird's Point transfer was abandoned we were operating by Belmont, Missouri, which is just opposite Columbus, Kentucky, but that proposition was found to be so expensive that a little later an operating proposition was made to handle that traffic via the east side lines, though today we have our own rails from Thebes to Cairo.

261 Now the conclusions that I want drawn from this exhibit are, that the route via Cairo or the route rather via Thebes and Cairo is not an unreasonable route for this traffic to Paducah in light of what the Commission say in the decision of the previous Paducah case, coupled with the 15 per cent allowance which has been used in innumerable cases.

Mr. Wright: Proceed with your next exhibit, Mr. Rausch.

Mr. Rausch: In the previous case, as I recall it, I read into the record some statistics as to our line with reference to the amount of traffic handled into Cairo proper, and going to various States. To indicate that to the States, what might be termed on the south of the Ohio River, outside of possibly Louisville, Cairo and Memphis, very little lumber was moving from the west side of the river, regardless of the fluctuation in rates, etc. Now, in order to make a more conclusive showing, I have had our Auditor draw off the figures both as to hardwood and yellow pine moving from all of the lines in what is known as the Southwestern territory, that is, particularly Arkansas, Louisiana and Texas, to the various States of consumption, both east and west of the river. I will file this as an exhibit.

Mr. Wright: I offer that as Rausch Exhibit Number 2.

(The statement, consisting of one page, so offered and identified,

was received in evidence and thereupon marked Defendants' Exhibit 2, Witness Rauch, received in evidence May 24, 1915, and is attached hereto.)

Mr. Wright: Now state the purpose of that exhibit.

Mr. Rausch: The exhibit, of course, speaks for itself, but I simply want to call attention to the fact that the figures show that the preponderance of this lumber via all lines is moving to Illinois. The total on hardwood lumber, the number of cars, being upwards of 15,000 for the period indicated; on yellow pine, upwards of 20,000, to Indiana, Iowa, Kansas, Michigan, Missouri, New York, 262 Ohio, etc., as against to, say Kentucky, Paducah being located in Kentucky, on hardwood 756 cars and yellow pine 520 cars.

Examiner La Roe: Is that all?

Mr. Wright: Mr. Rausch, what have you to say as to the density of traffic on the Iron Mountain into Cairo versus the density of traffic into Memphis?

Mr. Rausch: I had occasion to make some figures as to the density of traffic between St. Louis on the north and Little Rock and Texarkana on the south as compared to the density in and out of Memphis over the same track in Docket Number 7304 or 6390, I do not just recall.

Mr. Haid: 6,390?

Mr. Rausch: 6,390. My recollection is, that we found that the density of traffic of course between East St. Louis—

Mr. Wright (interrupting): That would be handled through Thebes?

Mr. Rausch: Would be handled through Thebes—was very much in excess of the density of traffic in and out of Memphis, something like 3 to 1 in favor of the Thebes-East St. Louis route. Now, considering it in that light, that is one of the reasons why we believe these lower rates should not be applied through Memphis, because any lower rate through Memphis than the Memphis combination means, of course, that some one might do some shrinking.

Now we originate, and our connections, an immense amount of lumber tonnage, the Iron Mountain lumber tonnage being approximately somewhere between 33 and 35 per cent of its total tonnage per year. On all that traffic, or so much of it as moves via Memphis to the territory where the rate makes on Memphis, we receive our tariff rate on all traffic; to the territory which makes through Cairp-Thebes we receive our tariff rate to those crossings

263 Now why should we single out and make a rate to a point like Paducah or any other point, and take less to Memphis than our tariff rate, and, of course, shrinking the the total Paducah rate by 6 cents per 100 pounds?

Examiner La Roe: That is all argument again, Mr. Rausch. Now if you have any more testimony, we will go on, or if you have not, they may cross-examine.

Mr. Wright: There is one other point, Mr. Rausch: In the original Case 5897, quite a brief was filed by Mr. Norman—I do not recall ever seeing it until this case came up—in which your testi

mony was quoted quite freely. Have you anything you care to remark on that, or, if not, I will cover it in my brief?

Mr. Rausch: Well, considerable mention was made there that I indicated that the rate to Cairo might be in excess of what it is, and I am quite sure that the making of the Cairo rate was fully explained, that is, the water competitive features and rail competition, and matters of that kind, and the facts of the matter are, our line and the Cotton Belt, particularly, have sought, since the filing of that brief, to increase the Cairo rate, which is now subject to review by the Commission in I. & S. Docket Number 520.

Mr. Wright: Those are the rates referred to as I. & S. 520 rates?

Mr. Rausch: Yes sir; so that the way the matter stands now, there is nothing to Mr. Norman's point in the prior brief.

Mr. Wright: Well, on account of the curtailment of the testimony, Mr. Examiner, I shall feel at liberty to go into the question pretty thoroughly in my brief.

Examiner La Roe: Very well.

264 Cross-examination:

Mr. Norman: Mr. Rausch, does your through traffic move through Cairo?

Mr. Rausch: What do you mean by our through traffic?

Mr. Norman: I mean traffic moving on the through rates from points on your line to the north and east—Does it go through Thebes and come down to Cairo?

Mr. Rausch: It goes through Thebes.

Mr. Norman: It does not come down to Cairo?

Mr. Rausch: No sir.

Mr. Norman: You said you got into Cairo on your own rails?

Mr. Rausch: Over our own rails, yes sir.

Mr. Norman: Is that a line that you own or lease?

Mr. Rausch. We own it. It is part of the Iron Mountain System.

Mr. Norman: From Thebes to Cairo?

Mr. Rausch: Yes sir.

Mr. Norman: You do not go in, then, in the way that the Cotton Belt does?

Mr. Rausch: No sir. We have our own rails from any point of production in the South to Cairo. The Cotton Belt has not.

Mr. Norman: What is the difference in distance, if you know, by your line to Cairo or around by Thebes to what it was when you had the Bird's Point crossing?

Mr. Rausch: It is about 75 miles by Dexter to Cairo around through Thebes; 49 or 50 miles direct to Bird's Point, a difference of 26 miles. In other words, by an act of Providence we are compelled to haul the traffic 26 miles further.

Mr. Norman: I believe that is all.

Mr. Wright: That is all.

(Witness excused.)

265 Mr. Norman: ~~Now~~ if the Examiner please, I will not offer any rebuttal evidence, but Mr. Sherrill testified this morning that he had certain letters which he thought showed that the rates from west of the river were quoted. I have those, and they are all pinned together and I will just file them as one exhibit.

Examiner La Roe: Have you copies for the other side.

Mr. Norman: I have copies for everybody.

(The letters, so offered and identified, were received in evidence and thereupon marked Complainant's Exhibit 1, Witness Sherrill, received in evidence May 24, 1915, and are attached hereto.)

Examiner La Roe: Complainant's brief will be due June 23rd; defendants' brief July 7th, and reply brief July 17th. How about oral argument, is that waived?

Mr. Haid: No; we would like an opportunity to argue this case orally, Mr. Examiner.

Examiner La Roe: Let the record show that oral argument is desired.

Whereupon, at 5:45 P. M., on the 24th day of May, 1915, the hearing in the above-entitled matter was closed.

"COMPLAINANT, RAMSEY #1."

Distances to Cairo and Paducah.

From—	Railroad location.	To Cairo.		To Paducah.	
		Via lines west. Miles.	Via Memphis. Miles.	Via Cairo. Miles.	Via Memphis. Miles.
Forest City, Ark.....	C. R. I. & P.—St. L., I. M. & S.....	214	214	253	210
Brinkley, ".....	C. R. I. & P.—St. L. S. W.....	234	238	276	236
Des Arc, ".....	C., R. I. & P.....	...	271	...	267
Little Rock, ".....	C., R. I. & P.—St. L. I. M. & S.....	280	302	322	298
Pine Bluff, ".....	St. L. S. W. O. St. L., I. M. & S.....	302	323	344	319
Fordyce, ".....	C., R. I. & P.—St. L. S. W.....	341	384	383	380
Camden, ".....	St. L., I. M. & S.—St. L. S. W.—M. & C.....	371	375	413	371
Alexandria, La.....	C. R. I. & P.—St. L., I. M. & S.....	517	506	559	502
Monroe, ".....	St. L., I. M. & S.....	420	409	462	405
Gallion, ".....	".....	385	371	427	367
Montrose, Ark.....	".....	350	336	392	332
McGehee, ".....	".....	326	312	368	308
Marianna, ".....	".....	231	221	273	217

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DUCKER EXHIBIT No. 1.

Statement Showing Volume of Traffic of Sixteen Representative Lumber Companies Doing Business in the City of Cairo Illinois Covering the Period 1913.

	Cars received by rail.	Outbound by rail.	Received off river.
1	150	115	40
2	652	1,070	285
3	370	700	1,866
4	1,926	1,936	....
5	1,539	1,292	....
6	617	543	....
7	78	15	....
8	451	400	....
9	1,136	786	....
10	408	396	....
11	259	....	292
12	256	359	....
13	187	80	....
14	813	636	....
15	379	366	290
16	101	18	....
Totals	9,322	8,712	2,773

Above covers car load shipments, lumber logs and forest products.

Lumber companies included in this statement:

Clark-Danforth Handle Company.

Chicago Mill & Lumber Co.,

Weis-Peterson Box Company.

Louisiana Lumber Co.,

C. C. Shafer Lumber Co.

Thos. McFarland Lumber Co.,

Kelly Brothers Lumber Co.,

The McClure Company.

Illinois Lumber Yards.

Vehicle Supply Company.

H. B. Blanks Lumber Co.

F. H. Atwood Lumber Co.

P. T. Langan.

Pioneer Pole & Shaft Co.,

Mississippi Box Company.

Cairo Lumber Company.

DUCKER EXHIBIT No. 2.

Statement Showing Volume of Traffic of Sixteen Representative Lumber Companies Doing Business in City of Cairo, Illinois, Covering Period 1914:

	Cars rec'd by rail.	Outbound by rail.	Received off river.
.....	165	82	12
.....	984	705	42
.....	381	694	1,722
.....	1,406	1,406	..
.....	863	1,027	..
.....	467	440	71
.....	88	15	..
.....	414	387	..
.....	979	1,288	..
.....	396	250	..
.....	334	..	359
.....	155	210	..
.....	194	100	..
.....	973	606	..
.....	250	299	319
.....	87	16	..
	<hr/> 6,621	<hr/> 7,526	<hr/> 2,525

Above covers shipments of lumber, logs and forest products.

Lumber companies included in this report:

Clerk Danforth Handle Company.
 Chicago Mill and Lumber Company.
 Weis Peterson Box Company.
 Louisiana Lumber Company.
 C. C. Shafer Lumber Company.
 Thomas McFarland Lumber Co.
 Kelly Bros. Lumber Company.
 McClure Co.
 Illinois Lumber Yards.
 Vehicle Supply Company.
 H. B. Blanks Lumber Company.
 F. H. Atwood Lumber Co.
 P. Y. Langan.
 Pioneer Pole and Shaft Company.
 Mississippi Box Company.
 Cairo Lumber Company.

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DUCKER EXHIBIT No. 3.

Statement Showing the Number of Cars of Lumber and Forest Products Handled at Cairo, Illinois, During the Period—1913-1914—by the Following Lines:

- (1) Illinois Central Railroad Company.
- (2) Mobile and Ohio Railroad Company.
- (3) The Cleveland, Cincinnati, Chicago and St. Louis Railway Company.

	1	2	3	4	5
1	8,064	922	6,626	....	2,572
2	3,297	....	664	....	26,281
3	908	710	6,181	605	5,214
Totals	12,269	1,632	13,471	605	34,067

Explanation of Columns Headed 1-2-3-4-5.

- (1) Number cars received inbound Cairo proper, rail.
 - (2) " " " " " " off river.
 - (3) Number cars outbound from Cairo proper by rail.
 - (4) " " " " from off river for beyond.
 - (5) " " reconsigned at Cairo for points beyond.
- Total Number cars handled. This statement, 62,044.

(Here follows map marked page 270.)

(Here follows Watson's Exhibit No. 2, marked page 271.)

CHART

TOO

LARGE

FOR

FILMING

WATSON'S EXHIBIT No. 2.

Statement of Rates on Lumber from Representative Points on the St. Louis Southwestern Railway to Cairo, Illinois.

St. L. S. W. Ry. Tariff No. —	64	213	477	1354	3605	5333	6233	6233	6460
				I. C. C. 622.	I. C. C. 2106.	I. C. C. 2858.	I. C. C. 3246.	I. C. C. 3246.	I. C. C. 3327.
Date.	Jan. 2, 1888.	Jan. 1, 1890.	Jan. 1, 1895.	Jan. 1, 1900.	Jan. 1, 1905.	Jan. 1, 1910.	Jan. 1, 1915.	Present rates.	Suspended I. & S. 520.
Applying on—	A	A	B C	B	B	B C	B C	B C	B C
Malden, Mo.	9	7	8 8	8 6-D	8 6½-E	9 9	9 9	9 9	9 9
Dexter, Mo. ....	....	7	8 8	8 6-D	8 6½-E	9 9	9 9	9 9	9 9
St. Francis, Ark.	9	10	10 10	10 8-D	10 8-E	10 10	10 10	10 10	10 10
Paragould, Ark.	10	10	10 10	10 8-D	10 8-E	10 10	10 10	10 10	10 10
Penrose, Ark. ....	....	....	....	10 9-D	10 9-E	11 11	11 11	11 11	13 13
Clarendon, Ark.	12	13	11 11	10 9-D	10 9-E	11 11	11 11	11 11	13 13
Humphreys, Ark.	12	13	12 12	12 { 12-C } + 10 }	12 { 11-C } Also Cyp. }	13 13	13 13	13 13	15 15
Cabool, Ark. ....	....	....	....	....	....	16 13	16 13	16 13	17 15
Rison, Ark.	12½	13	13 13	14 13-C	16 11-C	16 13	16 13	16 13	17 15
Kingsland, Ark.	12½	13	13 13	14 13-C	16 11-C	16 13	16 13	16 15	17 17
Garland City, Ark.	13	13	13 13	14 13-C	16 11-C	16 16	16 14	16 16	17 17

+ Applies on Oak and Cypress Lumber.

A Applies on all Lumber except Walnut, Butternut, Cherry, etc.

B Applies on Yellow Pine and Cypress Lumber.

C Applies on Ash, Cottonwood, Elm, Gum, Hickory and Oak.

D Applies on Gum and Cottonwood Lumber.

E Applies on Gum Lumber.

532.

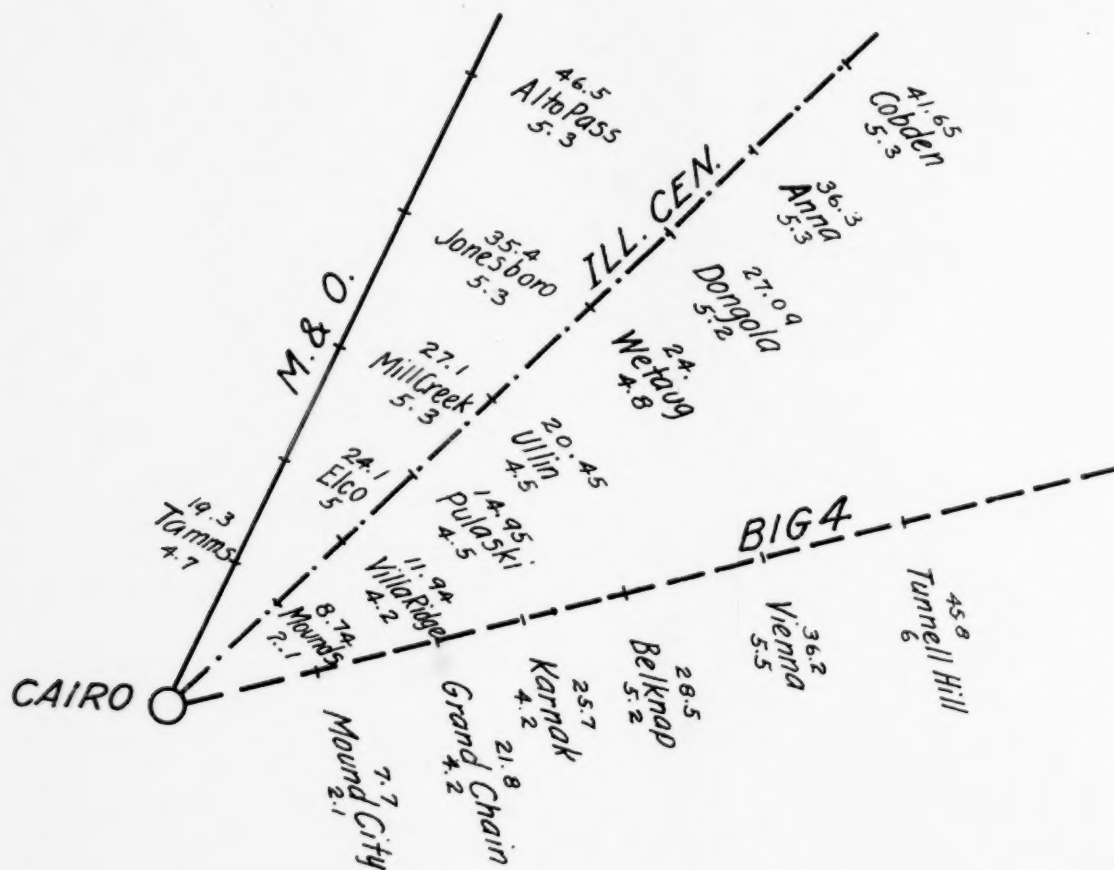
St. Louis Southwestern R. R. Co.

v.

The United States.

(Here follow maps marked pages 272-274, inclusive.)

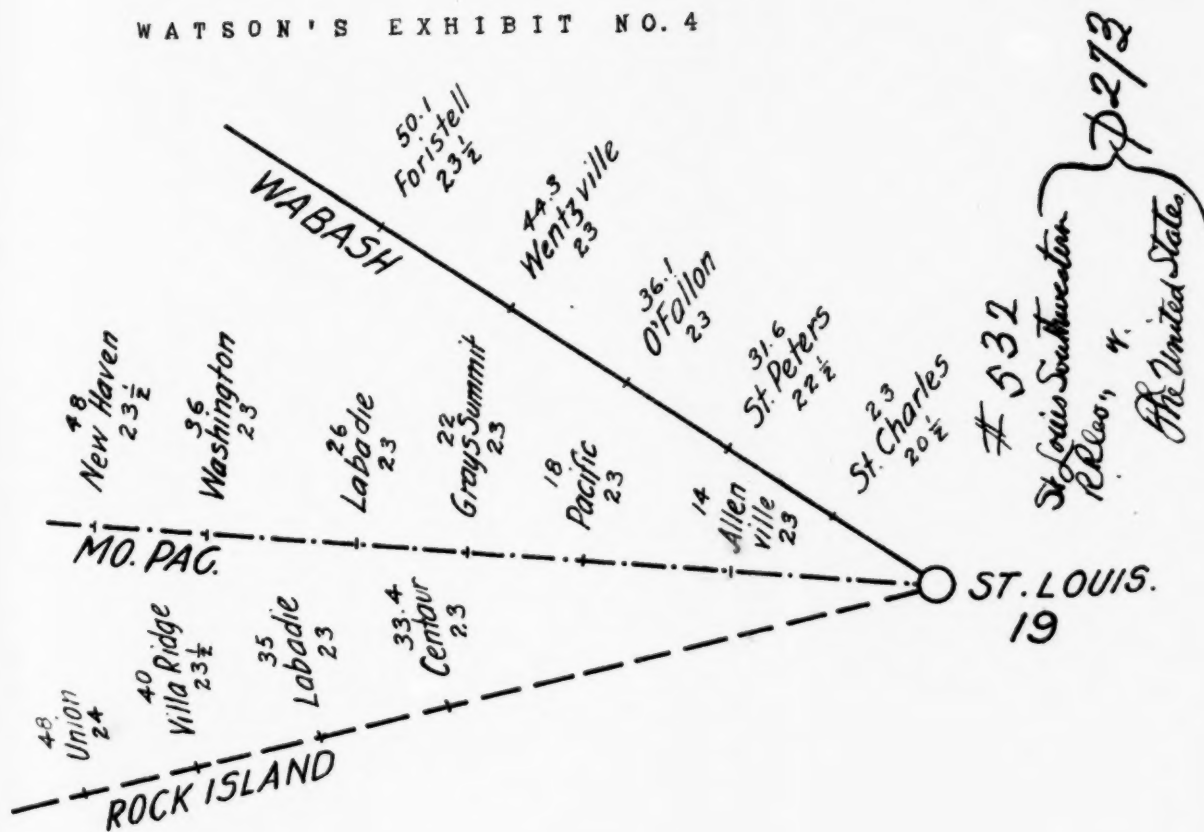
WATSON'S EXHIBIT NO. 3



Distance from Cairo shown above name.
Rates applicable from Cairo shown below name.

532
St Louis Southwestern
R.R. Co. "v." The United States
D. 272.

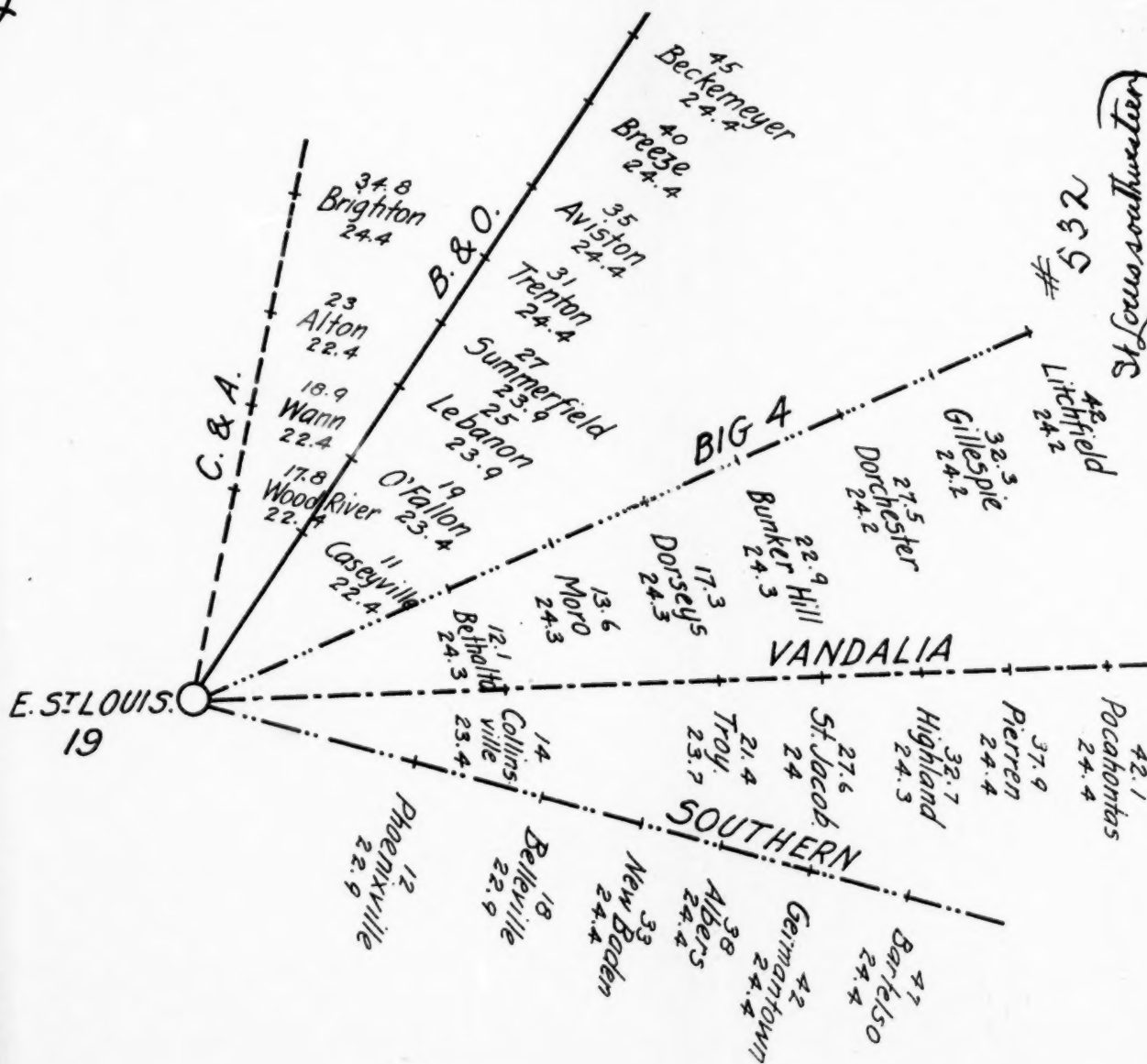
WATSON'S EXHIBIT NO. 4



Distance from St. Louis shown above name.

Rates on yellow pine from blanket territory shown below name.

WATSON'S EXHIBIT NO. 5



St. Louis southwestern RR. "The United States"

Distance from East St. Louis shown above name.
Rates on yellow pine from blanket territory shown below name.



WATSON Ex. 6.

Distance (Miles).	Rate.	Kind.	From—	To—	Remarks.	Reference.
179	16	Cypress	Little Rock, Ark.	Muldrow, Okla.	Established	18 I. C. C. 396
192	16	Cypress	Little Rock, Ark.	Sallisaw, Okla.	Established	18 I. C. C. 396
197	16	Cypress	Woodson, Ark.	Muldrow, Okla.	Established	18 I. C. C. 396
206	22½	Lumber	Beckville, Tex.	Waurika, Okla.	Established	17 I. C. C. 379
210	16	Cypress	Woodson, Ark.	Sallisaw, Okla.	Established	18 I. C. C. 396
212	16	Cypress	Little Rock, Ark.	Illinois, Okla.	Established	18 I. C. C. 396
221	26¼	Lumber	Beckville, Tex.	Comanche, Okla.	Established	17 I. C. C. 379
230	16	Cypress	Woodson, Ark.	Illinois, Okla.	Established	18 I. C. C. 396
231	26¼	Lumber	Beckville, Tex.	Duncan, Okla.	Established	17 I. C. C. 379
234	16	Cypress	Little Rock, Ark.	Ft. Gibson, Okla.	Established	18 I. C. C. 396
241	26¼	Lumber	Beckville, Tex.	Marlowe, Okla.	Established	17 I. C. C. 379
247	16	Cypress	Little Rock, Ark.	Wagoner, Okla.	Established	18 I. C. C. 396
257	17	Ties	Branson, Mo.	Dearborn, Mo.	Approved	URO A-661
276	19	Lumber	Keener, Ala.	Cairo, Ill.	Approved	24 I. C. C. 687
287	18	Cypress	Gleason, Ark.	Coffeyville, Kans.	Established	19 I. C. C. 348
287	17½	Ties	Elsey, Mo.	Dearborn, Mo.	Approved	URO A-661
293	18	Cypress	Woodson, Ark.	Branson, Mo.	Established	18 I. C. C. 396
295	18	Cypress	Little Rock, Ark.	Galena, Kans.	Established	18 I. C. C. 396
340	17	Lumber	Irondale, Ala.	Cairo, Ill.	Approved	24 I. C. C. 687
313	18	Cypress	Woodson, Ark.	Galena, Kans.	Established	18 I. C. C. 396
323	18	Cypress	Woodson, Ark.	Crane, Mo.	Established	18 I. C. C. 396

276

Distance (Miles).	Rate.	Kind.	From—	To—	Remarks.	Reference.
357	20½	Gum	Brilliant, Ala.	Thebes, Ill.	Established	20 I. C. C. 98
359	19	Lumber	Wauwatichie, Tenn.	St. Louis, Mo.	Approved	24 I. C. C. 687
367	19	Lumber	Omaha, Neb.	Adrian, Colo.	Established	19 I. C. C. 156
368	19	Lumber	Omaha, Neb.	Weir, Colo.	Established	19 I. C. C. 156
370	19	Lumber	Omaha, Neb.	Ovid, Colo.	Established	19 I. C. C. 156
374	17	Lumber	Sylacauga, Ala.	Carro, Ill.	Approved	24 I. C. C. 687
377	19½	Lumber	Omaha, Neb.	Sedgwick, Colo.	Established	19 I. C. C. 156
393	20	Lumber	Omaha, Neb.	Crook, Neb.	Established	19 I. C. C. 156
393	20	Lumber	Omaha, Neb.	Ruleton, Kans.	Established	19 I. C. C. 156
407	20	Lumber	Lake Charles, La.	Aranas Pass, Tex.	Approved	31 I. C. C. 258
408	20	Lumber	Lake Charles, La.	Corpus Christi, Tex.	Approved	31 I. C. C. 258
413	21	Lumber	Omaha, Neb.	Burlington, Colo.	Established	19 I. C. C. 156
424			Wye, Ark.			
to			to			
465	22	Hardwood	Westville, Okla.	Des Moines, Iowa.	Approved	29 I. C. C. 1
433	21	Lumber	Omaha, Neb.	Merino, Colo.	Established	19 I. C. C. 156
451	22½	Lumber	Mansfield, La.	Acme, Tex.	Established	25 I. C. C. 437
471			Barton Fork, Okla.			
to			to			
576	24	Hardwood	Page, Okla.	Des Moines, Iowa.	Approved	29 I. C. C. 1
472	22	Lumber	Omaha, Neb.	Weldon, Colo.	Established	19 I. C. C. 156

277

Distance (Miles).	Rate.	Kind.	From—	To—	Remarks.	Reference.
477	22	Lumber	Omaha, Neb.	Goodrich, Colo.	Established	19 I. C. C. 156
579			Fogel Spur, Okla.			
to			to			
623	24	Hardwood	Vandervoort, Okla.	Des Moines, Iowa.	Approved	24 I. C. C. 687

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WATSON'S EXHIBIT NO. 7.

Exhibit Showing Distances to Paducah, Ky., from Lumber Manufacturing Points West of the Mississippi River, Via Various Routes.

From Points on the St. Louis Southwestern Railway.

From—	To—	Via.			
		Memphis.	115% of distance via Mfs.	Cairo.	Thebes.
Shreveport, La...	Paducah....	505.3	581.1	496.5	531.1
Stamps, Ark. ...	Paducah....	438.7	504.5	428.9	464.7
Camden, Ark. ...	Paducah....	390.9	449.5	382.1	416.3
Millville, Ark. ...	Paducah....	377.4	434.	368.4	403.4
Fordyce, Ark. ...	Paducah....	361.	415.	352.2	387.
Draughton, Ark...	Paducah....	351.5	404.2	342.7	377.5
Clio, Ark.	Paducah....	339.3	390.	330.5	365.3
Pine Bluff, Ark. ...	Paducah....	321.4	369.6	312.6	347.4
Clarendon, Ark. ...	Paducah....	268.4	308.6	259.6	294.3
Weiner, Ark.	Paducah....	254.3	292.4	191.	225.7

Excess Memphis and Ill. Cent. over Thebes.

279

WATSON'S EXHIBIT NO. 8.

Exhibit Showing Distances to Paducah, Ky., from Lumber Manufacturing Points West of the Mississippi River, Via Various Routes.

From Points on the St. Louis, Iron Mountain & Sou. Ry.

From—	To—	Via			
		Memphis.	115% of dist. via Memphis.	Cairo.	Thebes.
Lake Charles, La...	Paducah....	602	692.3	633	663
Kinder, La.	Paducah....	568	653.2	599	629
Alexandria, La.	Paducah....	503	578.5	534	564
Monroe, La.	Paducah....	406	466.9	436	467
Dermott, Ark.	Paducah....	320	368.	351	381
Prescott, Ark.	Paducah....	412	473.8	393	423
Arkadelphia, Ark. ...	Paducah....	380	437.	361	392
Warren, Ark.	Paducah....	359	412.8	389	420
Nashville, Ark.	Paducah....	453	520.9	434	464
Crossett, Ark.	Paducah....	368	403.2	398	428
Marianna, Ark.	Paducah....	218	250.7	248	278
Huttig, Ark.	Paducah....	421	484.1	453	483

280

WATSON'S EXHIBIT NO. 9.

Exhibit Showing Distances to Paducah, Ky., from Lumber Manufacturing Points West of the Mississippi River, Via Various Routes.

From Points on the Chicago, Rock Island & Pacific Ry.

From—	To—	Via			
		Memphis.	115% of distance via Memphis.	Cairo.	Thebes.
Eunice, La.	Paducah . . .	663.	727.9	672.6	672.6
Turkey Creek, La. . .	Paducah . . .	606.8	697.8	646.4	646.4
Winnfield, La. . . .	Paducah . . .	530.	609.5	569.6	569.5
Pyburn, La.	Paducah . . .	519.9	597.8	559.5	559.5
Hodge, La.	Paducah . . .	504.9	580.6	544.5	544.5
Dubach, La.	Paducah . . .	471.8	542.5	511.4	511.4
Randolph, La. . . .	Paducah . . .	450.3	517.8	489.9	489.9
El Dorado, Ark. . .	Paducah . . .	431.4	496.1	471.	471.
Benton, Ark.	Paducah . . .	326.4	375.3	366.	366.
Little Rock, Ark. .	Paducah . . .	300.1	345.1	339.7	339.7
Brinkley, Ark. . . .	Paducah . . .	236.2	271.6	275.8	275.8

(Here follow maps marked pages 281 to 284, inclusive.)

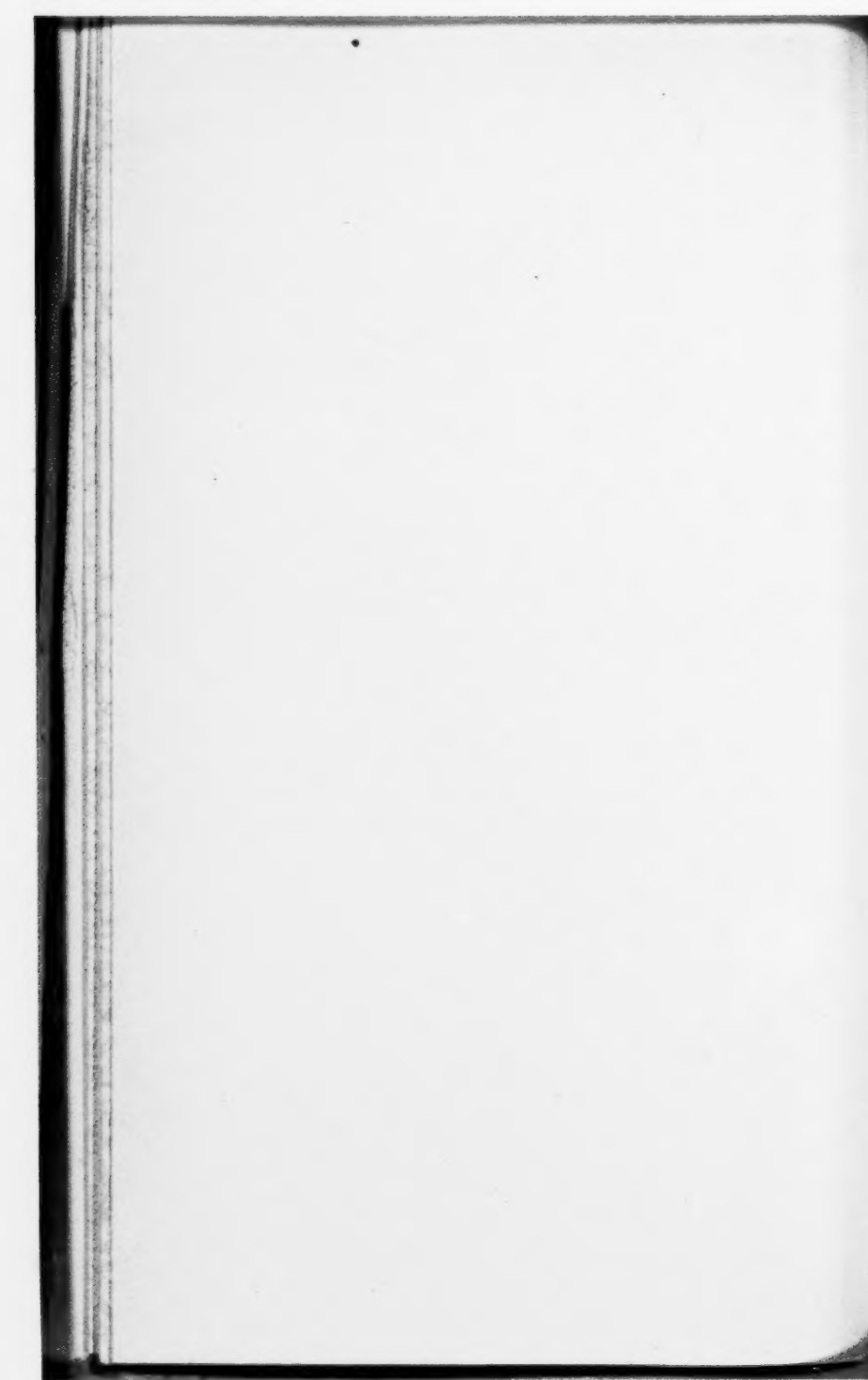
MAP

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FOR

FILMING



285 *Exhibit Showing Comparison of Rates to Cairo vs. Paducah as Applicable via the C., R. I. & P. Ry.; also Showing Rates Made on Memphis Combination.*

From—	To—	Gum.		Other hard-woods.		Yellow pine & cypress.	
		A	B	A	B	A	B
Proctor....	Cairo.....	16	12	10	12	10	12
	Paducah.....	15	12	15	12	15	12
	Memphis Comb'n..	15	*15	15	*15	15	*15
Brinkley..	Cairo.....	11	13	11	13	11	13
	Paducah.....	16	13	16	13	16	13
	Memphis Comb'n..	16	*16	16	*16	16	*16
Des Arc....	Cairo.....	11	13	11	13	11	13
	Paducah.....	16	13	17	13	17	13
	Memphis Comb'n..	19	*19	19	*19	19	*19
Little Rock	Cairo.....	13	15	13	15	16	17
	Paducah.....	18	15	19	15	20	17
	Memphis Comb'n..	20	*20	20	*20	20	*20
Fordyce... Eldorado..	Cairo.....	15	17	15	17	16	17
	Paducah.....	20	17	21	17	22	17
	Memphis Comb'n..	21	*21	21	*21	24	*24
Ruston.... Alexandria.	Cairo.....	16	17	16	17	16	17
	Paducah.....	21	17	21	17	22	17
	Memphis Comb'n..	24	*24	24	*24	24	*24

A—Present Rate.

B—Proposed rate I. & S. Docket 520.

*—To Paducah 1 cent less.

Interstate Commerce Commission. Docket No. 7736. Exhibit No. 5. Witness, Johanson. Date, 5/24/15. Defendant's Reporter, Sommis.

286 A. B. COPLEY was called as a witness, and having been duly sworn, testified as follows:

Direct examination:

Mr. Dickinson: Mr. Copley, what is your position with the Chicago, Rock Island & Pacific Railway?

Mr. Copley: Assistant General Manager of the Third District, what is known as the Third District.

Mr. Dickinson: What territory does the Third District cover?

Mr. Copley: It covers the territory south of Caldwell, to Tucumcari, and east to Memphis, and south to Dallas and Fort Worth.

Mr. Dickinson: Does it cover your lines in Louisiana?

Mr. Copley: Yes sir.

Mr. Dickinson: So that it covers all of the railroads involved in this hearing?

Mr. Copley: Yes, sir.

Mr. Dickinson: Do you know whether at this time, and whether during the past there has been in operation on the line of your road, a system of loading logs by power, called a log loader?

Mr. Copley: Yes, sir, we have a log loader that operates, 287 particularly between Hulbert and Madison.

Mr. Dickinson: That is on the line between Little Rock and Memphis?

Mr. Copley: Yes, sir.

Mr. Dickinson: Is that in operation today?

Mr. Copley: Yes, sir.

Mr. Dickinson: It is.

Mr. Copley: It is in operation whenever they call for the service.

Mr. Dickinson: How do you provide that that service shall be granted? Is that granted to all shippers who desire to use it?

Mr. Copley: Every one who has log loaders and asks us for the service is granted.

Mr. Dickinson: Is it covered by a published tariff?

Mr. Copley: Yes, sir.

Mr. Dickinson: On file with the Interstate Commerce Commission?

Mr. Copley: It is filed with the Commission of Arkansas.

Mr. Dickinson: I understand it is also filed with the Interstate Commerce Commission?

Mr. Copley: Likely so.

288 Mr. Dickinson: Now, the name of a Mr. Scott was mentioned here yesterday by Mr. Walker, as operating upon your road. Is he operating at this time?

Mr. Copley: Whenever asked for, yes, sir.

Mr. Dickinson: Is there any other person than Mr. Scott operating?

Mr. Copley: No, sir, Mr. Scott is the only man who has a log loader that I know of, that operates and loads logs for all mills. We have log loaders that operate on their own log lines.

Mr. Dickinson: But on your line?

Mr. Copley: He is the only one.

Mr. Dickinson: And Mr. Scott loads for shippers who desire to employ him for that purpose?

Mr. Copley: Yes, sir.

Mr. Dickinson: What do you know about the cars that are supplied by your road for log loading in this territory?

Mr. Copley: Logs are all loaded on plain flats, and the haul being very short, within a radius of 30 miles, and the deliveries all being to foreign lines at Memphis, we lose a large part of our cars, and are compelled to keep the supply up by hauling them from

the western territory, frequently as high as 500 miles to get them into the log territory.

Mr. Dickinson: Are they hauled in here empty as a rule or loaded?

Mr. Copley: Empty. We have not much loading for that class of equipment into this territory.

Mr. Dickinson: So that as a rule they are brought in here empty?

Mr. Copley: Yes, sir.

Mr. Dickinson: You say you lose them. What do you mean by that expression?

Mr. Copley: We deliver them to the Illinois Central and other lines going to the mills, and wherever a line is short of cars and has the empties, they confiscate them for their own loading.

Mr. Dickinson: They get away from your hands then when they reach Memphis, is that it?

Mr. Copley: A large per cent of them.

Mr. Dickinson: There is no distinction, however, between the cars which you haul in from long distances into Arkansas for loading, and the cars which are right here in Arkansas?

Mr. Copley: We have made a practice in the last year of keeping as many of our steel cars in this trade as possible.

289 It requires about two hundred cars to take care of the service and the damage to wooden equipment is very severe, and we have tried to get them out of the service and get steel cars in. Aside from that there is no difference.

Mr. Dickinson: The point you desire to develop there, if I understand you, Mr. Copley, is that by reason of the cars leaving your possession at Memphis and getting away from you, and being used in other service, many times you have to keep a large supply of cars on hand than you would otherwise have to do?

Mr. Copley: Yes, sir.

Mr. Dickinson: And I suppose that requires pretty constant service in getting the empties into Arkansas for this loading?

Mr. Copley: We are hauling empties into this territory all the time when the log business is good. We keep a check on it and keep moving the cars into the territory all the time.

Mr. Dickinson: Now, when you get the cars into Arkansas at some station near the point where the loading is to be accomplished, will you go through briefly with the operation which is necessary in handling those cars to secure the load, and then to get it back again into the train of your company for the haul to Memphis. Take a concrete example, take any number of cars you think is representative.

291 Mr. Copley: The cars are usually ordered through Mr. Scott. He does not define who the loading is for, but says, "I want 40 cars next Thursday," for example, and we assemble the cars as near as possible to where he wants to load, usually at Hulbert. A train is ordered from Hulbert, and is given the forty empty cars for loading.

Mr. Dickinson: You say the cars are assembled at Hulbert, and you said something about a train. Do you refer to—

Mr. Copley: An engine and crew handling the log train.

Mr. Dickinson: The empty cars from Hulbert?

Mr. Copley: Mr. Scott's log loader ties up at Hulbert. This train is ordered for seven o'clock in the morning and picks up the loader, and whatever flat cars we have assembled there, and goes to Proctor. They commence loading, and as they load from three to five cars they are set out, and moved along, as they are ready, all along the line. Whenever we have five cars loaded they are set out. This is continued during the day until the forty cars are loaded.

Mr. Dickinson: That is, those 40 cars are usually distributed out?

Mr. Copley: They are usually distributed in six or seven
292 different places.

Mr. Dickinson: As a rule is that on your main line?

Mr. Copley: Yes, sir, it is all on our main line, they are set out on our passing tracks. After the day's work is completed we usually handle the logs to the terminal with the same crew that Scott has, the train becoming a revenue train after he quits loading. There are cases where we handle those that are set out with a through freight.

Mr. Dickinson: In other words, you stop your through freight train and pick up these cars by breaking up a train and switching the cars into the train?

Mr. Copley: Yes, sir. Now, from an operating standpoint, we have always objected to this service.

Mr. Dickinson: Just one question before we get to that. Can you say whether or not by reason of the operation of this log loading which you have described, your company is enabled to save any money over and above what the cost would amount to to you if you didn't have that log loading, and actually performed the service yourself?

Mr. Copley: From a transportation standpoint it would be, as to the loading, about an even break, but with maintenance of the track, it is very severe.

293 Mr. Dickinson: The expense of this train which takes up these cars, is the expense paid for by Mr. Scott, is that correct?

Mr. Copley: Yes, sir.

Mr. Dickinson: And is the amount which he pays to you to cover the cost of that crew, in any respect in excess of the actual cost to you of that crew?

Mr. Copley: No, sir.

Mr. Dickinson: The amount then that is paid by Mr. Scott to you is based upon the actual cost which you incur by reason of having that crew on your hands?

Mr. Copley: Of the crew and fuel and lubrication.

Mr. Dickinson: The crew, fuel and lubrication, and something for the use of the locomotive, I assume?

Mr. Copley: Yes sir.

Mr. Dickinson: Now, you testify that you, if I understand you correctly, that your company saves nothing by reason of this operation?

Mr. Copley: No, sir.

Mr. Dickinson: Well, then, do you encourage the practice on your road?

Mr. Copley: No, sir, we have always objected to it.

294 Mr. Dickinson: Why do you grant it then?

Mr. Copley: For the reason that there are no roads, the country is marshy, they could not get the logs to the side track, and in order to accommodate the mills and assist them in getting the stuff out, we permit this service.

Mr. Dickinson: In other words, it is a service, is it not, that permit- of the bringing up of these logs to your main line where there is no practicable road leading to that loading point, at that station, is that it?

Mr. Copley: Yes, sir.

Mr. Dickinson: Do you consider that the privilege that you have allowed to meet that peculiar situation?

Mr. Copley: Yes, sir.

Mr. Dickinson: In what respect, if any, does the operation of that loading interfere with your ordinary train service?

Mr. Copley: We have an average of thirty trains a day over that territory. Practically every train is more or less delayed. The log loader works upon the main line, and naturally flags the approaching trains, and causes some delay, and the log loader dropping tonnage on passing tracks, it becomes necessary for trains to head on and back out on account of the track being blocked that

295 otherwise would pass right through.

Mr. Dickinson: The operation then, does it create considerable interference and delay with your ordinary train service?

Mr. Copley: Yes, sir.

Mr. Dickinson: And I suppose that is true of passenger trains as well?

Mr. Copley: We keep out of the way of passenger trains, not so much with those as with freight trains.

Mr. Dickinson: Do you consider that the situation is the cause of any substantial expense to your company?

Mr. Copley: Yes, sir. I have not worked it out to figures just what the expense might be, but there is delay there to the operation.

Mr. Dickinson: Does that method of loading have any effect upon your equipment, and if so, what effect does it have?

Mr. Copley: Cars that are in the logging service will require \$20 a month repairs for decks, hand holds and brake staffs. I understand that the log loader passes over the top of each flat car, and it is necessary to remove the brake staff and replace it after the car is loaded, and oftentimes they are broken.

Mr. Dickinson: That is, this loader is rolled over the

296 decks and tops of the flat cars?

Mr. Copley: Yes, sir.

Mr. Dickinson: From one car to another?

Mr. Copley: Yes, sir.

Mr. Dickinson: Is it your judgment that the damage to the equipment is of sufficient amount to make it desirable to have this operation performed?

Mr. Copley: Yes, sir, we have always felt that the operation was undesirable.

Mr. Dickinson: Does the loading of the logs in this manner cause any damage to your roadway, and if so, in what respect?

Mr. Copley: The logs are loaded, our track is built on a five-foot to a 12-foot fill. The logs are hauled in and unloaded at the toe of the fill. The log loader being rigid, they throw out their hook and drag the log up to the track. The damage to the dump or the fills will probably,—well, I will estimate it at 10,000 yards of dirt a year necessary to repair the fills where logs are loaded.

Mr. Dickinson: In other words, the drawing up of the logs tears away the face of the fill?

Mr. Copley: Tears away the face, and the heavy rains
297 wash it.

Mr. Dickinson: Leaving a space for the rain to wash the fill out?

Mr. Copley: Yes, sir.

Mr. Dickinson: Is that very expensive?

Mr. Copley: Well, all the material that we get into that territory we are compelled to haul in, and 50 cents a yard would be a very small estimate. At one time we had our right of way through that territory all fenced around with a good five-wire fence, that has been totally destroyed by log loaders hauling logs to the track.

Mr. Dickinson: Do you know, Mr. Copley, whether there is any loading for these lost cars that you succeed in getting from Memphis?

Mr. Copley: Any return loading?

Mr. Dickinson: Yes, sir.

Mr. Copley: No, sir.

Mr. Dickinson: Is it the rule or otherwise that when these cars are returned and hauled westbound from Memphis, they are empty?

Mr. Copley: Yes, sir.

Mr. Dickinson: Do you know whether your company pays
298 any bridge charge on these empty cars to get across the river?

Mr. Copley: Well, if we had more empties than loads in a month we would pay \$1.00 each for the empties. The bridge gives us the right to handle an empty with a load, one offsets the other.

Mr. Dickinson: So, it is only in case of an excess empty movement that you would have to pay?

Mr. Copley: Yes, sir.

Examiner Watkins: Is there a movement of empties in excess of your loading movement?

Mr. Copley: No, sir, we try to keep them balanced.

Examiner Watkins: I did not understand what position you have with the road?

Mr. Copley: Assistant General Manager of the Third District.

Mr. Dickinson: How long have you been with the Rock Island?

Mr. Copley: 33 years.

Mr. Dickinson: With it continuously?

Mr. Copley: Continuously without missing a day's pay.

Mr. Dickinson: And has that service been largely in this territory?

Mr. Copley: I have been in this territory seven years.

299 Mr. Dickinson: Are you familiar with the system in other states?

Mr. Copley: Yes, sir, I have worked in Iowa, Kansas, Oklahoma, Illinois, Colorado, Nebraska, Dakota and Minnesota.

Mr. Dickinson: Practically the whole system and always in the operating department?

Mr. Copley: Yes, sir.

Mr. Dickinson: Mr. Copley, what is the character of the soil and topography of the country in Arkansas, having in mind railroad construction and operation?

Mr. Copley: It is very bad.

Mr. Dickinson: Just detail that a little, starting out with the character of the soil, and what effect that has on the maintenance of your tracks?

Mr. Copley: The class of material, soil, that we have in Arkansas to construct railroads, a large portion of it is what we call gumbo, that will not carry a load, or will not lie still. Whenever we have filled, we are compelled to select a soil that will stand, and in some cases haul it 150 or 200 miles. We have a dirt pit at Forest City, Crowley's Ridge, that we usually select for fill. The maintenance charge for the operation of the railroad in Arkansas is practically 50 per cent more than it is in Oklahoma. We can maintain a railroad in Oklahoma with one man to the mile, where we will use two and two and a half in Arkansas, and not maintain as good a railroad as we will maintain in Oklahoma. Our maintenance in Arkansas for material and labor in 1912 was \$1,822.75 a mile.

Mr. Dickinson: Per mile of road?

Mr. Copley: Per mile of road. In Oklahoma for the same year it was \$785.56.

For the year 1913, per mile of road the cost in Arkansas was \$1,713.41. For Oklahoma it was \$762.93.

For the year ending June 30, 1914, in Arkansas, it was \$1,487.50. In Oklahoma it was \$811.34.

That is a fair comparison of the two territories.

Mr. Dickinson: And that extra cost of maintenance, labor and material, I believe that is what you gave, is due to the conditions in Arkansas that are different from those in Oklahoma?

Mr. Copley: Well, the labor cost in 1912 in Arkansas was \$877.89 a mile. In Oklahoma it was \$413.08.

For the year 1913, per mile of road in Arkansas it was \$912.27; in Oklahoma it was \$456.16.

301 For the year ended June 30, 1914, in Arkansas the cost was \$708.52; in Oklahoma it was \$413.02.

Now, the material practically offsets the labor, they run about even, from 50 to 55 per cent of each, but the material charge on either division is about the same. The labor and material will always run close to half and half.

Mr. Dickinson: And how about your cost of material in Arkansas?

Mr. Copley: The cost of material in Arkansas per mile in 1912 was \$944.25, as compared with Oklahoma \$372.48.

In 1912, per mile, in Arkansas it was \$819.14; in Oklahoma it was \$306.77.

In 1914 the cost in Arkansas was \$779.05; in Oklahoma it was \$398.32.

Mr. Dickinson: Now, Mr. Copley, is it due to the nature of the soil, is that one of the causes?

Mr. Copley: That is one of the causes, and the heavy rain-falls that we have, the amount of rainfalls that we have, the amount of rail that we have in Arkansas, causing flood damage, et cetera.

Mr. Dickinson: Now, briefly state a few of the facts in reference to the character of your construction, say first between
302 Memphis and Little Rock—is there anything unusual about it?

Mr. Copley: I don't just get that, Mr. Dickinson.

Mr. Dickinson: Is there anything unusual or out of the ordinary with respect to the character of your construction?

Mr. Copley: Our line between Memphis and Little Rock is practically built on a fill. The first 40 miles out of Memphis is all fill. The water stands around the toe of the fills, softens them, and they slide and roll. There has been no practical cure for it. We have spent lots of money in trying to maintain it. There is only one solution that I have worked out, to widen the dump, and slope them about 3 to 1, which will cost \$500,000., and that is the reason we haven't done it.

Mr. Dickinson: \$500,000. for what part of the line?

Mr. Copley: 40 miles from here to Madison.

Mr. Dickinson: Are there any trestles or bridges on that line?

Mr. Copley: We have 23 miles of trestles on the Arkansas division. I am not quite sure, but I think there are 8½ miles between Little Rock and Memphis. 4½ miles of that are within 40 miles.

Mr. Dickinson: Why don't you fill those up?

303 Mr. Copley: We are now called upon by the Government to widen our openings between Little Rock and Memphis. During the high water that we had in 1912 and 1913, it was said that our fills had a great deal to do in not letting the water get away fast enough, and we have an estimate now prepared for putting in 1,600 feet more of bridging within the levees. Our railroad runs for a mile and a half on the levee, or, in other words, we turn our roadbed over to the Government for a levee. They have raised their levee both north and south of ours, and we are now asked and are compelled to raise our levee five feet, to compare with the two levees that they have constructed, at a cost—I am not quite sure of the figures, but I think \$165,000.00.

Mr. Dickinson: The bridging of course that you maintain, or are

required to maintain, is relatively more or less expensive than the fill for an equal distance?

Mr. Copley: Well, bridges are more expensive than fills. They of course deteriorate and must be renewed.

Mr. Dickinson: Is this country through which your line runs in Arkansas, and which you have been discussing, unusually subject to flood conditions?

Mr. Copley: Yes, sir, we have suffered from flood conditions I believe in 1883, 1897, 1903, 1912 and 1913.

Mr. Dickinson: Those floods you refer to now were of an unusual character?

Mr. Copley: Yes, sir.

Mr. Dickinson: Do you have floods of a more minor character more frequently than that?

Mr. Copley: Well, we have more or less flood damage every year.

Mr. Dickinson: You have more or less flood damage each year?

Mr. Copley: Yes, sir. The floods I mentioned are exceptional cases, and caused great damage.

Mr. Dickinson: Have you ever had anything to do to your track to hold it down, to keep it from getting away from its place?

Mr. Copley: Yes, sir, we have driven piling and anchored it, and tied it to trees, and everything.

Mr. Dickinson: And put stone on it?

Mr. Copley: In 1912 and 1913 I put 560 cars of stone on the track between Madison and Bridge Junction.

Mr. Dickinson: Did you cover up the track entirely?

Mr. Copley: To keep it from floating and washing, holding it in place.

Mr. Dickinson: Did the floods ever require you in the past to change your entire outlet here west of the river at Memphis?

Mr. Copley: In 1907, 1906 and 1907, and previous to that, our terminal was located at Hopefield. The terminal was valued at an estimated value of \$75,000.00.

Mr. Dickinson: Just state where Hopefield is.

Mr. Copley: It is just across the river from Memphis on the west side. In 1907 the damage was so great that we could not operate, or did not operate for several weeks, and we began to look for a place where we might keep out of the flood.

Mr. Dickinson: And that change in location was a very expensive operation, was it not?

Mr. Copley: Yes, sir, We went eight miles further west to what is known as Hulbert, where we had to fill an entire yard, and move our facilities there at a cost of \$175,000.00.

Mr. Dickinson: What became of Hopefield?

Mr. Copley: Hopefield is now in the Mississippi River, the largest part of it.

Mr. Dickinson: It fell into the river?

Mr. Copley: It fell in. The floods we had in 1912 destroyed all our property, washed practically all of it away.

Mr. Dickinson: Now, dealing with this entire situation, Mr.

Copley, does it compare with any other part of the 8,000 or 9,000 miles of railroad included in your system?

Mr. Copley: No, sir, it does not.

Mr. Dickinson: Just explain that answer. Is there any similarity to it?

Mr. Copley: No, sir.

Mr. Dickinson: On your system, or anything nearly as bad?

Mr. Copley: No, sir, I don't know of a division on the 8,000 miles of railroad that equals the Arkansas division in any way, in operation, transportation and maintenance.

Mr. Dickinson: Do you care to make any remarks, Mr. Copley, in reference to expenses, if any, of an abnormal character, due to legislative enactments in Arkansas?

Mr. Copley: Well, we have a good many laws in Arkansas that we don't have in other states that are rather expensive to the railroads.

Mr. Dickinson: Will you refer to those briefly?

Mr. Copley: Just a few of the laws. First, those of 1907:
307 An act fixing the maximum passenger rates at 2 cents per mile.

Act 61, page 144, requiring railroads to pay for stock killed within 30 days after notice, in default of which railroads are liable for double the amount of damage and attorney's fees. That requires us to carry a large force of claim agents traveling all the time, with heavy expense, in order to get to every cow that is killed within 30 days.

Act Number 141, page 336, makes railroads liable for all damage by fire resulting from operation, whether from negligence or not.

Act Number 146, page 353, requires criers at all junctions points, a law compelling us to keep a crier at Jelks, Arkansas, where we have nothing but a depot. The agent must cry out when a train comes, announcing where the train goes and where it came from.

Mr. Dickinson: Are there there any stores there or any population?

Mr. Copley: There is one store.

Act No. 193, page 453, reciprocal demurrage act, provides a penalty of \$5 per day for failure to furnish cars, or failure to move freight 50 miles per day.

308 Act 402, page 1018, requires headlights of 1500 candle power on all locomotives.

In addition to the above this legislature passed 76 special acts requiring railroads to construct depots, viaducts, and stop trains, maintain agents, operate extra trains, et cetera.

Now, in 1909:

Act 13, page 21, requires corporations to have two regular pay-days in each month.

Act 298, page 899, prescribed minimum number of employes to be used in operating passenger trains, and adds one employe to many crews.

This legislature passed ten special acts similar to those of 1907.

In 1911:

Act 88, page 55, regulating liability of employers for injuries to employes, abolishes defense of assumed risk, contributory negligence, fellow servant, and makes the test of negligence more rigid against the employer.

Act 112, page 67, imposes a franchise tax for privilege of doing business in the state.

Act 261, page 257, requires all frogs to be blocked, under heavy penalty.

Act 418, page 362, regulates the size and construction of caboose cars. I might add that when that law became effective it was necessary for us to go into the market and buy cabooses to replace those that we were running, for the reason that they did not have platforms. That legislature passes 11 special acts similar to those in 1909.

In 1913:

Act 67, to regulate the size of switching crews in cities of first and second class, adds one and two men to many crews. The cost on the Arkansas division of that law amounts to \$19,000.00 a year.

Act 122, increases the franchise tax of 1911, by fixing the rate at one-fifteenth of one per cent of the capital stock employed in the state.

This legislature passed 10 special acts similar to those of 1911.

Now, we have a full crew bill in Arkansas that we have nowhere else, a third brakeman, which costs \$37,000.00 a year.

Those are just a few of the things that we have in Arkansas that we don't have on other portions of our railroad.

Mr. Dickinson: Do you know of a statute the "lookout statute," what it is? I confess I don't.

310 Mr. Copley: Well, we have a law in Arkansas that makes us responsible for any accident to any trespassers, and the law requires—it was modified; when it was first introduced it was intended to have an additional man on the engine. Somebody suggested that he ride on the pilot, and others suggested that he might ride in the cab. It was finally modified so that the engineer or the fireman would be compelled to keep a lookout at all times. If some one is struck or injured it is contributory negligence on the part of the engineer, and we are responsible.

Mr. Dickinson: Even though the man is a trespasser?

Mr. Copley: Even though the man commits suicide. We have had one or two cases where we absolutely know the man was walking alongside the track and turned around and jumped in front of the engine and committed suicide, but we are responsible, and we pay for it.

Examiner Watkins: Responsible whether you could help it or not?

Mr. Copley: Yes, sir.

Examiner Watkins: Have the courts construed that law that way?

Mr. Copley: Well, we have not been able to beat one.

311 Mr. Dickinson: Now, the act imposing a franchise tax, for doing business in Arkansas, that is in addition to your regular property tax?

Mr. Copley: Yes, sir.

Mr. Dickinson: I will state at this time that I am not here, regardless of my personal views or the personal views of the witnesses, either to praise or condemn these laws. Half of them I didn't know that he had, but they are offered at this time as tending to show a large increase in the cost of operation and of doing business in the State of Arkansas.

Now, Mr. Copley, do those laws which you have referred to apply equally to traffic that finds its destination in Memphis?

Mr. Copley: Yes, sir.

Mr. Dickinson: Why is that?

Mr. Copley: For the reason that it applies to all our train service, and the Memphis service is moved in practically all trains.

Mr. Dickinson: Your terminals I suppose are necessarily on the west side of the river?

Mr. Copley: Yes, sir, we have two, one at Memphis, and one on the other side. Our freight all stops at Hulbert.

312 Mr. Dickinson: There is one point I overlooked. Are the climatic conditions here different from those in other states north of here where your system runs?

Mr. Copley: Yes, sir, we have more rain, and bad water in Arkansas than we do in any other part of the railroad. I believe the annual rainfall in Arkansas is normally 32 inches. In 1912 and 1913 I think it was as heavy as 52 inches.

Mr. Dickinson: What effect, if any, does that have upon your maintenance of structures and material, like ties?

Mr. Copley: Our structures in Arkansas deteriorate very fast, I would say 25 per cent quicker than those in Oklahoma, Iowa or Colorado.

Mr. Dickinson: How long would an average oak tie untreated last here in Arkansas?

Mr. Copley: From four and a half to five years.

Mr. Dickinson: How long would the average oak tie last—what would be the life of the average oak tie say in Kansas or Iowa?

Mr. Copley: Why, we get about eight years.

Mr. Dickinson: Nearly double?

Mr. Copley: Yes, sir.

Mr. Dickinson: You may cross examine.

313 Cross-examination:

Mr. Walker: The cost of ties is included in this item of material, is it not?

Mr. Copley: Yes, sir.

Mr. Walker: I believe you said that the heaviest log movement on your line is between Memphis and Madison?

Mr. Copley: Yes, sir.

Mr. Walker: And these 30 trains a day along there all operate in and out of Memphis, do they?

Mr. Copley: Out of Memphis and Hulbert.

Mr. Walker: How many of them operate out of Memphis?

Mr. Copley: We have 12 daily passenger trains.

Mr. Walker: How many freights.

Mr. Copley: It runs all the way from 20 to 30. I think in the month of October we had an average of 30 trains a day including the passenger trains.

Mr. Walker: That is into and out of Memphis?

Mr. Copley: The freight trains don't go to Memphis. That includes Memphis and the freight trains out of Hulbert.

Mr. Walker: The freight trains—the cars in those trains all go to Memphis, do they not?

Mr. Copley: No, sir. We have a connection at Hulbert 314 where we deliver the freight trains to the Frisco.

Mr. Walker: What proportion of the trains, or of the cars do go to Memphis?

Mr. Copley: Well, I would say 80 per cent.

Mr. Walker: And all the passenger trains operate in and out of Memphis?

Mr. Copley: Yes, sir.

Mr. Walker: Now, that division of your line has a heavier traffic density than any other portion of your line in Arkansas I take it?

Mr. Copley: It has.

Mr. Walker: Now, this contract for logging on your line, how long has that been in effect?

Mr. Copley: Why, we have been loading logs there, I don't know exactly, I think probably since 1905 or 1906.

Mr. Walker: This man Scott has the exclusive privilege of loading on the main line of your road, I take it?

Mr. Copley: No, sir, he does not. Scott being the only man that I know of that has a log loader, that loads logs for the general public on our line, but any man who has a log loader and wants to operate on our line can come tomorrow. We will furnish the cars 315 and take care of them. We have no contract with Scott.

Mr. Walker: There is no other operator, however, except Scott?

Mr. Copley: No, sir.

Mr. Walker: Now, of course, that contract is of substantial benefit to your road?

Mr. Copley: No, sir, if the mill men could get their logs out of the bottom we would cancel the tariff tomorrow.

Mr. Walker: But you said they could not get them out of the bottoms?

Mr. Copley: No, sir, they could not.

Mr. Walker: Doesn't it save the expense of constructing a siding?

Mr. Copley: Well, we have worked that out. We do not feel that we should be asked to put in a siding every mile and a half or two miles to get logs out. First, there is the hazard connected with the additional switching within the main track, we don't want that. Then, we tried to work out logging stations at a greater distance, but we found that we could not do it.

Mr. Walker: Now, as I understand it, Scott pays you \$50 a day

for 10 hours for the use of the train crew and locomotive,
316 is that correct?

Mr. Copley: Yes, sir. I am not sure, but I think that rate is a little low, I think it is \$56; I am not just clear on that.

Mr. Walker: The contract of the Valley Log Loading Company on the Yazoo & Mississippi Valley provides for \$56, I understand.

Mr. Copley: That may be, but when we increased our schedule with our employes, we increased the train service charge to Scott.

Mr. Walker: Now, just in your local service, what are the wages of the engineers and firemen, the brakemen and conductors?

Mr. Copley: The engineer's salary would be \$4.80 a day; three brakemen would amount to \$7.75; the firemen \$3.70; the conductor, \$4.25.

Mr. Walker: Now, a locomotive in that service will consume what, seven or eight tons of coal a day?

Mr. Copley: About ten tons.

Mr. Walker: What is that coal worth per ton?

Mr. Copley: It is worth \$2.16.

Mr. Walker: A locomotive in that service is a small locomotive, is it not?

317 Mr. Copley: Well, we usually pick out a small engine, an 18 by 24, one of our freight engines; we do not run anything but the C class 31 engine into that territory.

Mr. Walker: What is the original cost of an engine of that character?

Mr. Copley: Why, I should say \$22,000.

Mr. Walker: When your log cars leave your line and are switched to the terminals at Memphis of the Illinois Central or the Iron Mountain, you are paid a per diem, are you not, for the use of those cars?

Mr. Copley: We are paid a per diem, a reclaim of four days, yes, sir.

Mr. Walker: 45 cents a day?

Mr. Copley: Yes, sir.

Mr. Walker: What is the original cost of a flat car in that service?

Mr. Copley: Well, I would say, a steel car, \$850 or \$900.

Mr. Walker: We had a witness here yesterday who testified that he understood that the cars cost from \$600 to \$800.

Mr. Copley: A steel car?

Mr. Walker: That was what he was talking about, but that
318 was an estimate.

Mr. Copley: I would say from eight hundred and fifty to nine hundred dollars. I would say right off, without knowing exactly, I would say that \$850 was small.

Mr. Walker: How long have those cars been in the service over there, steel cars?

Mr. Copley: Oh, we have had more or less steel cars in for two or three years. I cannot give you exactly the percentage, but lately more of them have been steel cars. Just as fast as we get them in we do so.

Mr. Walker: The repairs on these cars that you mentioned, just how is that item made up?

Mr. Copley: It is made up from our repair track report, our foreman at Hulbert makes it up, and it shows every item of repairs that is placed on a car.

Mr. Walker: Do your figures show the repairs to logging cars for certain periods of time, a month or two months?

Mr. Copley: We have that record, yes, sir; I haven't it with me.

Mr. Walker: Could you furnish the Commission, for the benefit of this record, with a statement of the repairs to logging cars for the month of May, 1914, with the various items of expense and
319 the number of cars repaired?

Mr. Copley: I think I can furnish that all right, but I won't say that, there is some months we don't load logs at all.

Mr. Dickinson: I would suggest that it is just as easy to have it for a longer and more representative period.

Mr. Copley: I would rather give you a statement for six months than one month.

Mr. Walker: We would rather have it that way. Give us six months of 1914.

Mr. Dickinson: Is it a fact that when those cars go to other lines and need repairs, the other line charges you for the expense?

Mr. Copley: Yes, sir, we have certain rules. If they make a repair they will charge us for it. We have rules which we call the Master Car Builders' rules. The rule applies for a foreign repair, we furnish what we call a service card to the foreign line, it is good for the expense of the repair.

Mr. Dickinson: How about that expense being in the figures you expect to furnish, will it be there?

Mr. Copley: Yes, sir.

Mr. Dickinson: The expense paid other lines?

320 Mr. Copley: Yes, sir.

Mr. Walker: That figure will be separate from the others?

Mr. Copley: I will try to make it plain to you, yes, sir.

Mr. Walker: That information will be sent to Mr. Dickinson, will it, and Mr. Dickinson will file it in the record and send it to me?

Mr. Dickinson: Yes, sir.

Mr. Walker: That is all.

Mr. Dickinson: Mr. Copley, suppose you haul a Chicago, Milwaukee & St. Paul car for 400 or 500 miles into this territory, and load it, and give it to the Illinois Central, does the Illinois Central pay you any per diem while the car is in their possession?

Mr. Copley: No, sir. If I deliver the car to it and they return it tomorrow, I would pay them four days per diem. They have four days reclaim.

Mr. Dickinson: If the car was not returned to you how would that be handled?

Mr. Copley: They would pay a per diem?

Mr. Walker: The Illinois Central?

Mr. Copley: Yes, sir.

Mr. Dickinson: And you would be in the position then
321 of paying the per diem during the time it required to haul
the empty car, say from El Reno?

Mr. Copley: We pay the per diem just as long as the car is on
our rails. Whenever we receive it we commence paying the per
diem.

Mr. Walker: Do you pay on Sundays and all days in the year?

Mr. Copley: Every day of the year.

Mr. Dickinson: Is the percentage of foreign cars that are loaded
with these logs very material or substantial?

Mr. Copley: 35 per cent of the cars are foreign cars:

Mr. Walker: Have you confiscated somebody else's cars, is that
what explains that fact?

Mr. Copley: No, but we receive some loading at Memphis from
a connection, loaded in flat cars going out to Fort Worth that are
home through this territory, and on their return we load them.
I never stole a car in my life.

Mr. Walker: That is all.

(Witness excused.)

322

RAUSCH'S EXHIBIT No. I.

I. C. C. Docket No. 7736.

Distances in Miles to Paducah, Ky., via.

From—		Memphis.	115%	Cairo.	Thebes.
Benton,	Ark.....	340	391	326	352
Malvern,	"	360	414	346	372
Gurdon,	"	396	455	381	407
Hope,	"	427	491	403	439
Texarkana,	"	460	529	445	471
Marianna,	"	218	251	253	279
Lakeview,	"	245	282	280	306
Snow Lake,	"	274	315	309	335
McGehee,	"	313	360	347	373
Montrose,	"	337	388	371	397
Kimball,	"	358	412	392	418
Bonita,	La.....	366	421	400	426
Collinston,	"	386	444	420	446
Monroe,	"	406	467	441	467
Columbia,	"	435	500	470	496
Georgetown,	"	466	536	501	527
Alexandria,	"	503	578	538	564
Oakdale,	"	542	623	577	603
Kinder,	"	568	653	603	629
Lake Charles,	"	602	692	637	663

Above distances are predicated on using Iron Mountain to Mem-
phis, Cairo and Thebes.

Memphis to Paducah, 167 Miles—Illinois Central.

Cairo to Paducah, 43 Miles—Illinois Central.

323 Interstate Commerce Commission, Docket No. 7736.

Distribution of Hardwood and Yellow Pine Lumber by Destination States.

Consolidated statement showing number of cars hardwood lumber and number of cars yellow pine lumber originating during months of November, 1911, January, March, May, July and September, 1912, on lines listed as Defendants in I. C. C. Docket No. 4907 (except I. C. R. R. and M. & N. A. R. R.) to all destinations, distribution being shown according to destination States.

State of destination.	Hardwood lumber.		Yellow pine lumber.	
	Number cars.	% of total.	Number cars.	% of total.
Athens, Ills.....	37	.08	58	.07
Breese, ".....	14	.03	16	.02
Bunker Hill, ".....	5	.01	199	.23
Carpenter, ".....	38	.09	32	.04
Cairo, ".....	1,538	3.37	1,191	1.37
Cypress, ".....	594	1.30	387	.45
Godfrey, ".....	....	....	14	.01
Herrick, ".....	170	.37	128	.15
Jewett, ".....	189	.42	277	.32
Olmstead, ".....	31	.07	391	.45
Thebes, ".....	474	1.04	395	.45
All other Points in Illinois..	12,150	26.64	17,423	20.07
Total Illinois	15,240	33.42	20,511	23.63
States.				
Arizona	5	.01	146	.17
Arkansas	369	.81	675	.78
Alabama	28	.06	3	....
California	254	.56	18	.02
Colorado	159	.35	347	.40
Connecticut	72	.16	194	.22
Delaware	2	....	4	....
District of Columbia.....	....	....	3	....
Florida	110	.24	1	....
Georgia	86	.19	25	.03
Idaho	13	.03	....	....
Indiana	3,006	6.59	5,547	6.39
Iowa	1,472	3.23	5,182	5.97
Kansas	1,252	2.75	6,918	7.97
Kentucky	756	1.63	524	.60
Louisiana	2,929	6.42	357	.41
Maine	3	.01	42	.05
Maryland	28	.06	102	.12
Massachusetts	211	.46	500	.58

Michigan	1,500	3.29	2,980	3.43
Minnesota	669	1.47	346	.40
Mississippi	103	.23	52	.06
Missouri	6,556	14.38	13,517	15.57
Montana	5	.01	....	....
New Hampshire	5	.01	35	.04
New Jersey	228	.50	88	.10
Nebraska	793	1.74	2,765	3.19
New Mexico	5	.01	205	.24
New York	1,368	3.00	661	.76
Nevada	1	....	....	....
North Carolina	15	.03	....	....
North Dakota	1	....	5	.01
Ohio	1,522	3.34	3,970	4.57
Oklahoma	148	.32	4,706	5.42
Oregon	10	.02	....	....
Pennsylvania	669	1.47	1,355	1.56
Rhode Island	17	.04	55	.06
South Dakota	20	.04	94	.11
Tennessee	2,330	5.11	1,317	1.52
Texas	1,644	3.61	11,657	13.43
Utah	37	.08	4	....
Vermont	1	....	47	.05
Virginia	43	.09	26	.03
Washington	21	.05	3	....
West Virginia	66	.14	106	.12
Wisconsin	1,094	2.40	1,240	1.43
Wyoming	2	....	3	....
Canada	549	1.20	387	.45
Other Countries	186	.41	96	.11
Total	45,603	100.00	86,821	100.00

Office of Auditor Freight Receipts, Missouri Pacific-Iron Mountain System, St. Louis, Mo., May, 1915.

[Stamped:] Interstate Commerce Commission. Docket No. 7736. Exhibit No. 2. Witness, Rausch. Defendant's. Date, 5/24/15. Reporter, J. O.

324 I. C. C. DOCKET NO. 7736, SHERRILL EXHIBIT "No. 1."

EAST ST. LOUIS, ILL., Apr. 29, 1915.

Sherrill Russell Lbr. Co., Paducah, Ky.

GENTLEMEN: Having a favorable rate to your place from our large plant at Fullerton, La., and wishing to increase our business with you, we would like to ask if you would care to have us send you,

from time to time, our Specials from that mill. By "Specials" we mean items that we have in surplus.

Very truly,

CHICAGO LBR. & COAL CO.

Die.

H. H. WILHITE.

I. C.

325 A. S. Sherrill, Prest. C. A. Weis, V. P. C. H. Sherrill, Treas.
H. V. Serrill, Sec. & Mgr.

Colfax Hardwood Lumber Co., Incorporated, Manufacturers.

Band Sawed Oak, Ash, Cypress and Gum.

Chicago Office 929 Webster Bldg.

H. J. Reinhard, Sales Mgr.

Located on La. R. & N. Co.

Western Union.

Cumberland Telephone.

Phone Wabash 3040.

COLFAX, LA., GRANT PARISH, Mch. 8th, '15.

Sherrill Russell L. Co., Paducah, Ky.

GENTLEMEN: Yours of the 5th. I att quote dlw Paducah as follows:

1 car 12 x 12—16 L L Y P Rough #1 C at \$21.00

(Quotations subject to change without notice. All agreements subject to strikes, accidents and other delays unavoidable or beyond our control.)

Shipment in about two weeks. My. Lurry says that he thinks this price a little high for you as no doubt you can do better East River a/c rate. The Big Pine will quote later to day, if lower will forward. Their — lost their kiln Friday by fire and its possible will name attractive figure as it does not have to go thru kiln.

Very truly,

H. V. SHERRILL.

Big Pine just quoted 21.00 f. o. b. Paducah or 13. Colfax Wt. 4500#.

If you can not do better place with Big Pine but do not show either preference if can buy cheaper.

Write them both direct relative to their quotations.

- 326 Chicago Lumber & Coal Co., Established 1866. Incorporated 1895. Capital, \$6,500,000. Manufacturers and Dealers. General Offices, Murphy Building, East St. Louis, Ills.

Yellow Pine Department, Yard and Shed Stock, H. M. Willhite, Mgr.

EAST ST. LOUIS, ILLS., 1/2/15.

Sherrill-Russell Lbr. Co., Paducah, Ky.

GENTLEMEN: (All agreements are contingent upon strikes, accidents, delays of carriers, and other delays unavoidable or beyond our control. All proposals are subject to prompt acceptance. All prices are subject to change without notice. All contracts are subject to the approval of the General Office at East St. Louis.)

Accept our thanks for your inquiry of the 31st, but inasmuch as our East Side Mill is closed down and we have no rate from our Fullerton plant to La Center, Ky., we are denied the pleasure of attaching price to the list you enclose.

Yours very truly,

CHICAGO LUMBER & COAL CO.

Dict.

H. M. WILLHITE.

E. M.

327

MEMPHIS, TENN., 4/14/13.

Sherrill Russell Lbr. Co., Paducah, Ky.

GENTLEMEN: I have delayed replying to your inquiry of the 8th to hear from some of my west side connections, in hopes they could figure out a favorable rate to your point. But it seems they cannot, and I will give you below the best I have at present from the east side mills, which are f. o. b. cars Paducah:

1	car	1x10-10 to 20'	#2	Boards	S2S.....	19.50	M'
1/2	"	1x12-12'	"	"	Rgh.....	23.00	
1/2	"	" 14'	"	"	"	22.00	
1	"	2x4-16	#2	Dim. S. & E.....		19.25	
1/2	"	" 12	"	"	"	20.25	
1/2	"	" 14	"	"	"	19.25	
1/2	car	4x6-10 to 20'	#1,	50% 16',	S4S.....	22.00	
1/4	"	6x6-	Do.	Do.	.....	"
1/4	"	4x4	"	"	.....	"
1	"	5/8x4-10 to 20'	#1	Com. Clg.....		21.25	
1/2	"	1/2x4-10 to 20'	#1	Com. Clg.....		18.75	
1/2	"	"	Do.	#2	"	13.75	
1	Car	1x4- 10 to 20'	#2	Com. Flooring.....		16.50	

Can give you very prompt service on all above items in well manufactured and graded stock, and trust you can favor me with orders for same.

Kindly thanking you for the inquiry, and with personal regards, I am,

Yours truly,
P. O. Box 236.

K. KIMBERLIN,
Memphis, Tenn.

328 J. W. Ferguson, President. J. D. Ferguson, V. P. J. C. Sobey, Secretary. J. P. Towery, Treasurer.

[S. L. Co.]

Sabine Lumber Company, Manufacturers of Yellow Line Lumber.
Wright Building.

Mills: Zwolle, Louisiana; Colfax, Louisiana; Sour Lake, Texas;
New Willard, Texas; Trinity, Texas.

ST. LOUIS, MO., August 8, 1913.

Sherrill-Russell Lumber Co., Paducah, Ky.

GENTLEMEN: Replying to your letter of the 5th inst. we herewith enclose a stock-sheet showing surplus on hand at our Colfax Mill.

This is the only one of our mills that has a favorable rate to Paducah.

In figuring the prices from this mill, you will use the 18¢ list.

If you will look over this stock sheet, we believe that you will find some items that you can use at the prices mentioned.

Yours very truly,

(Signed)

SABINE LUMBER COMPANY,
J. F. OLDHAM.

J. F. O./C. G. H.

Encs.

329 J. A. Bentley, President. E. W. Zimmerman, Vice-Pres.
W. W. Whittington, Jr., Sec'y & Treas.

Enterprise Lumber Company, Ltd., Manufacturers of Long Leaf
Yellow Pine Timbers and Dimension.

ALEXANDRIA, LA., Feb. 13th, 1915.

Sherrill-Russell Lumber Co., Paducah, Ky.

GENTLEMEN: We have your favor 10th, and appreciate the inquiry. We are not in position to quote on the 2x10 S4S as all of our stock is sized from the saw and stacked on the yard to Standard working, so that we have none of this in the rough and to ship it green our figures would not be attractive.

On the 4x4 and 4x6 we name you a price of \$19.50 S4S No. 1 Common. On the car 2x8-10 & 12 we name prices as follows, provided you could take the stock of our regular cutting, which, however, would be about $\frac{1}{4}$ " scant:

2x8	\$20.50
2x10-14	21.50
2x12	22.50

These prices based on 85% Heart. We do not cut for any of this stock in No. 2 Common.

Could make shipment of the entire order, should you favor us with same, in one to two weeks.

The above prices based upon present rate of 18¢ to Paducah.

With regards,

Yours very truly,

(Signed)

ENTERPRISE LUMBER CO., LTD.,
GUY H. MALSSOM.

G. H. M./A.

330

4/13/15.

Tremont Lbr. Co., Winfield, La.

GENTLEMEN: Yours 10th, we regret very much to note that your Mr. Hilzheim is confined with illness, will you be good enough to remember the writer to him, and express the hope that his illness will be of short duration.

There are quite a number of mills on the West side having a 16¢ rate in effect, if this rate applies from your mill, we believe it would be a good idea to mail us, at your convenience, your stock sheet with prices and we assure you they will be treated strictly confidential, and as we are in the market, and your prices will justify, you will get the business just the same as if you had a representative on the ground.

Very truly,

SHERILL RUSSELL LUMBER COMPANY.

C. H. S./R.

331

Tremont Lumber Company,

Manufacturers of Yellow Pine Lumber.

General Offices, Winfield, Louisiana.

Directors: David G. Joyce, Chicago, Illinois; James Stanley Joyce, Chicago, Illinois; Thomas Hume, Muskegon, Mich.; Eugene J. Carpenter, Minneapolis, Minn.; Samuel J. Carpenter, Winfield, La.

Officers: Samuel J. Carpenter, Pres.; David G. Joyce, Vice-Pres.; James Stanley Joyce, Sec'y-Treas.

Mills at Eros, Louisiana; Rochelle, Louisiana; Jonesboro, Louisiana.

(All Correspondence pertaining to company business must be addressed to the Company—Not to individuals.)

April 16, 1915.

Sherrill-Russell Lbr. Co., Paducah, Ky.

GENTLEMEN: In writing you today with reference to the rate to your point we failed to call attention to the fact that we cannot make any shipments to Paducah from our Jonesboro, La. mill, as the rate from that mill is 23½¢. We mention this fact, as there may be some stock on our Special or regular stock sheet shown at Jonesboro, which you may desire to order.

Yours very truly,

TREMONT LUMBER COMPANY,
By A. PARKER, *Secretary*.
M.

F. M.-D.

332

4/26/15.

Tremont Lumber Co., Winfield, La.

GENTLEMEN: Yours 16th, we note in second paragraph you state you do not know of any West side mills that have a 16¢ rate to Paducah. Following is a list of them: De Ridder, La., Bon Ami, La., Lake Charles, Woodsworth, Long Bell, La.

Very truly,

SHERRILL-RUSSELL LBR. CO.

C. H. S./R.

333

Tremont Lumber Company,

Manufacturers of Yellow Pine Lumber.

General Offices, Winfield, Louisiana.

Directors: David G. Joyce, Chicago, Illinois; James Stanley Joyce, Chicago, Illinois; Thomas Hume, Muskegon, Mich.; Eugene J. Carpenter, Minneapolis, Minn.; Samuel J. Carpenter, Winfield, La.

Officers: Samuel J. Carpenter, Pres.; David G. Joyce, Vice-Pres.; James Stanley Joyce, Sec'y-Treas.

Mills at Eros, Louisiana; Rochelle, Louisiana; Jonesboro, Louisiana.

(All correspondence pertaining to company business must be addressed to the company—not to individuals.)

May 7, 1915.

Sherrill-Russell Lbr. Co., Paducah, Ky.

GENTLEMEN: We received your favor of April 26th, advising that the mills at De Ridder, La., Bon Ami, La., Lake Charles, Woodsworth and Long-Bell, La., had a 16¢ rate to Paducah. Upon receipt

of this information we took the matter up with the Kansas City Southern Ry. Co., also with the St. —, I. M. & S. Ry. Co., and we give you herewith copies of letters received from them to-day, which explain themselves.

You will note that the K. C. S. claim that the rate from De Ridder, Bon Ami and Lake Charles is 23.4¢ and the Iron Mountain claims that the rate from Lake Charles and Woodworth is 24¢.

Yours very truly,

TREMONT LUMBER COMPANY,
By A. PARKER, *Secretary*.
M.

F. M.-D.

334 St. Louis, Iron Mountain & Southern R'y.

ALEXANDRIA, LA., May 1, 1915.

Tremont Lumber Co., Winfield, La.

GENTLEMEN: In reply to your letter of April 20th, would advise there are no through rates on Yellow Pine Lumber from Woodworth or Lake Charles, La., to Paducah, La., and best combination is made over Memphis, Tenn., as follows:

Rate, Lake Charles or Woodworth to Memphis, Tenn. 14 cents per one hundred pounds, and Memphis to Paducah 10 cents per one hundred pounds, make a total of 24 cents per one hundred pounds.

Yours truly,

DAN JACOBS,
Ass't General Freight Agent.

335

5/10, 15.

Tremont Lbr. Co., Winfield, La.

GENTLEMEN: We have yours 7th, wish to advise that a 16¢ rate applies from the points named in our letter of Apr. 27th to Paducah. Long Bell Lbr. Co. representative was in our office and advised us that this was a fact and later had same confirmed by local I. C. Agent. We gave you this information for what it might be worth to you, and ask you not to quote us if you desire to make further investigation. Furthermore, Chicago Lbr. & Coal Co. have been shipping to Paducah from Fullerton, La. for some time on a 16¢ rate.

Very truly,

SHERRILL-RUSSELL LBR. CO.

C. H. S./R.

336 Before the Interstate Commerce Commission.

Docket No. 5897.

PADUCAH BOARD OF TRADE, Complainant,
vs.

ILLINOIS CENTRAL RAILROAD COMPANY et al., Defendants.

PADUCAH, KENTUCKY,
September 17, 1913.—10 o'clock a. m.

Before: Special Examiner Fred H. Esch.

Met pursuant to notice.

Appearances:

W. F. Bradshaw, Jr. (Paducah, Ky.) and Hines & Norman (Paul Jones Bldg., Louisville, Ky.), Appearing for the Complainant.

M. P. Callaway (Washington, D. C.), Appearing for The Yazoo & Mississippi Valley Railroad Company; Alabama & Vicksburg Railway Company; Alabama Great Southern Railroad Company; Gulf & Ship Island Railroad Company; Mobile & Ohio Railroad Company; New Orleans & Northeastern Railroad Company; New Orleans, Mobile & Chicago Railroad Company; Southern Railway Company, Southern Railway in Mississippi; Vicksburg, Shreveport & Pacific Ry. Co.

A. P. Humburg (135 Park Row, Chicago, Ill.), Appearing for The Yazoo & Mississippi Valley Railroad Company.

W. F. Dickinson (Chicago, Ill.), and J. E. Johanson, (Little Rock, Ark.), Appearing for the Chicago, Rock Island & Pacific Railway Company.

Fred G. Wright and C. C. P. Rausch (1114 Railway Exchange, St. Louis, Mo.), Appearing for the Missouri, Pacific Railway Company; St. Louis, Iron Mountain & Southern Railway Co., and Natchez & Southern Railway Company.

George B. Auburtin (New Orleans, La.), Appearing for the New Orleans Great Northern Railroad Company.

S. H. West, E. A. Haid and R. D. Coleman (1531 Pierce Bldg., St. Louis, Mo.), Appearing for the St. Louis Southwestern Ry. Co.

R. B. Scott (Chicago, Ill.), Appearing for the Chicago Burlington & Quincy Railroad Company.

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339

Proceedings.

Examiner Esch: The Interstate Commerce Commission has set for hearing case No. 5897, entitled Paducah Board of Trade versus Illinois Central Railroad Company et al. Who appears for the Complainant in this proceeding?

Mr. Norman: Hines & Norman and Bradshaw & Bradshaw.

Examiner Esch: For the defendant carriers?

Mr. Callaway: If you will permit me, I will just call the carriers for whom I appear. M. P. Callaway for the Illinois Central Railroad Company; Mr. A. P. Humburg also for the Illinois Central Railroad Company; Yazoo & Mississippi Valley Railroad Company, the Alabama & Vicksburg, Alabama Great Southern, Gulf & Ship Island, Mobile & Ohio, New Orleans & Northeastern, New Orleans, Mobile & Chicago, Southern Railway, Southern Railway in Mississippi and Vicksburg, Shreveport & Pacific. I appear for those lines I have called.

Mr. Wright: F. G. Wright and C. C. P. Rausch for the Missouri Pacific Railway Company; St. Louis, Iron Mountain & Southern and Natchez & Southern.

Mr. Johanson: W. F. Dickinson and J. E. Johanson, Chicago Rock Island & Pacific Railway.

340 Mr. Coleman: S. H. West, E. A. Haid and R. D. Coleman for the St. Louis Southwestern Ry. Co.

Examiner Esch: The complaint in this case filed by the Paducah Board of Trade alleges that the defendant carriers maintain rates on all kinds of lumber from points in Arkansas, La., and Mississippi territory to Paducah, Ky., that are from one to six cents per hundred pounds higher than the rates contemporaneously charged on the same kinds of lumber from these points to Cairo, Illinois, and that the rates to Paducah, Ky. are unjust, unreasonable and unduly discriminatory, giving to the merchants and manufacturers of Cairo undue preference which is in violation of the Act to Regulate Com-

merce. It is alleged that both cities sell lumber and lumber products in the same territories, namely, in Central Freight Association Western Trunk Line and Trunk Line territories. On behalf of the defendants it is alleged that the rates to Paducah are not unjust, unreasonable or discriminatory. The complainants may proceed with their witnesses.

Mr. Hines: We will introduce Mr. Craig.

C. W. CRAIG was called as a witness and having been duly sworn testified as follows:

341 Direct examination:

Mr. Hines: Mr. Craig, you are Secretary of the Paducah Board of Trade, are you?

Mr. Craig: Yes, sir.

Mr. Hines: Is the Paducah Board of Trade a corporation or a voluntary Association?

Mr. Craig: A corporation.

Mr. Hines: How long has it been in existence?

Mr. Craig: A year in May, April or May.

Mr. Hines: What is the object of the corporation?

Mr. Craig: It is to further the interests of the city of Paducah.

Mr. Hines: Who are its members?

Mr. Craig: It is made up of a membership of about 260 of the citizens of Paducah.

Mr. Hines: This complaint was filed by order of that corporation, was it?

Mr. Craig: Yes, sir.

Mr. Hines: What is the population of Paducah?

Mr. Craig: 22,760, in 1910.

Mr. Hines: Is it somewhat larger than that now, do you think?

Mr. Craig: It is somewhat more, yes.

342 Mr. Hines: What was the population of Cairo as shown by the last census?

Mr. Craig: 14,548 in 1910.

Mr. Hines: What railroads enter Paducah?

Mr. Craig: The Illinois Central, the N. C. & St. L., and the C. B. & Q. operate in over the Illinois Central tracks via Brookport.

Mr. Hines: Those are the only lines entering Paducah?

Mr. Craig: Yes, sir.

Mr. Hines: What roads enter Cairo?

Mr. Craig: Well, the M. & O., and Illinois Central from the South, the Cotton Belt from the west, and the Iron Mountain operates in there.

Mr. Callaway: He does not mean those are all, I take it, just what you can think of?

Mr. Hines: You don't think of any others than those named to Cairo?

Mr. Craig: The Big Four from the north.

Mr. Hines: What is the extent of the lumber business at Paducah? Is there any lumber manufactured at Paducah?

Mr. Craig: Yes, sir.

Mr. Hines: What manufacturers of lumber have you, do
343 you recall?

Mr. Craig: We have the Langstaff-Orm Manufacturing Company; Sherrill-King & Lumber Company and the Sherrill-Russell Lumber Company; Paducah Box & Basket Company; Paducah Cooperage Company; Fooks Lumber Company; the A. B. Smith Lumber Company; The J. W. Little, and the Mutual Wheel Company. They manufacture spokes and forest products. That is all of the important ones.

Mr. Hines: Are there any persons rehandling lumber at Paducah who ship in lumber from the south and after handling it ship it out again to the north?

Mr. Craig: No, sir.

Mr. Hines: Why is that if you know?

Mr. Craig: The combination of rates through Paducah is such that it is an impossibility to move in and move out lumber on a competitive basis with our competition, Cairo.

Mr. Haines: Do you know of any lumber interests or industries or any persons contemplating the rehandling of lumber who have thought of locating at Paducah, and who after looking into the rate adjustment here have located elsewhere?

Mr. Craig: We have had several that have looked over the situation here and were unable to do business here, and then
344 located elsewhere. We have one firm in Metropolis now that looked over the situation here and located over there, that is Ortman, Nichols & Cox.

Mr. Hines: You say looked over the situation. The situation in what respect?

Mr. Craig: Well, looked over the city for a manufacturing point here, and then when they examined the freight rates they found out that they could not do business here, consequently they had to go to Metropolis.

Mr. Hines: Do you know of any lumber industries which have located at Paducah and afterwards by reason of the rate adjustment moved part or all of their plants?

Mr. Craig: Well, we have a plant operating here now manufacturing. About half of the business is in Paducah, and they have been forced to move to Cairo. That is the Leigh Banana Case Company. I did not give that name in the list of industries here. They were getting their raw material from Des Arc, Arkansas, and the Cairo combination would make their rate 17 cents, the Memphis combination would make it 19, against the 11 cent rate at Cairo, consequently they could not stay in this city.

Mr. Hines: Have any lumber industries informed you of
345 their intention to remove from Paducah if they do not get relief in this case?

Mr. Craig: The A. B. Smith Lumber Company expect to leave here and move their yards from here in a very short time. They are not handling lumber, however. It is foreign products, telephone poles.

Mr. Hines: Do you know any reason other than the rate adjustment why Paducah should not be as good a lumber market as Cairo?

Mr. Craig: None whatever. It should be better by the geographical location. We have no floods as compared with Cairo. Of course, we have had a flood here, but nothing to compare with the disasters they have had there. It should be better.

Mr. Hines: To what extent is Cairo subject to overflow?

Mr. Craig: It is a levee town and the levees have frequently broken through, flooding the manufacturing district.

Mr. Hines: On what rivers is it located?

Mr. Craig: The Ohio and Mississippi.

Mr. Hines: You may take the witness.

Mr. Callaway: No questions.

346 Cross-examination:

Mr. Humburg: Just one question, Mr. Craig. You have had some difficulty with overflow at Paducah also during the last year?

Mr. Craig: Yes, sir; some, very slight.

Mr. Humburg: That is all.

(Witness excused.)

A. B. SMITH was called as a witness and having been duly sworn, testified as follows:

Direct examination:

Mr. Hines: Mr. Smith, where do you live, and what business are you engaged in?

Mr. Smith: Paducah, wholesale lumber.

Mr. Hines: What kind of lumber do you handle?

Mr. Smith: Hard woods.

Mr. Hines: From what points do you ship the lumber which you handle?

Mr. Smith: From south of the river almost altogether, north of the Ohio River, through Illinois, Indiana and Michigan.

Mr. Hines: Ship it from both north and south of the river?

347 Mr. Smith: From the south into the north.

Mr. Hines: I am asking from what point you ship lumber into Paducah, from the south?

Mr. Smith: Yes, sir.

Mr. Hines: From all parts of the south?

Mr. Smith: Yes, sir.

Mr. Hines: Or what territory?

Mr. Smith: Tennessee, Kentucky, Mississippi.

Mr. Hines: And to what points do you ship that lumber out after you handle it here?

Mr. Smith: Into Illinois, Indiana, Michigan, places like Chicago, Grand Rapids, Detroit.

Mr. Hines: Do you simply rehandle lumber, or are you merely a rehandler of lumber, or in what form do you get it in and what form do you ship it out?

Mr. Smith: We get it in in various thicknesses and grades, we

put it in the yards at Brookport and Metropolis and there we reasort the various thicknesses and the various grades, getting in a position to fill orders for direct shipment to the trade.

Mr. Hines: You do not rehandle that in Paducah? I am speaking now of your business which you do at Paducah?

348 Mr. Smith: We do not handle any lumber at Paducah.

Mr. Hines: You do not handle any lumber at Paducah?

Mr. Smith: No, sir.

Mr. Hines: Why not?

Mr. Smith: The freight rates into the north by rehandling at Paducah would be two cents per hundred pounds higher than by rehandling at points north of the river such as Brookport, Metropolis, Joppa or Cairo.

Mr. Hines: So you handle it at Brookport and Metropolis in order to get the benefit of the rate out, the rate north, do you?

Mr. Smith: Yes, sir.

Mr. Hines: Do you or not deal in telegraph and telephone poles?

Mr. Smith: Yes, one of our companies, The Paducah Pole & Timber Company, handle chestnut telephone and telegraph poles.

Mr. Hines: Where do you handle those poles, in Paducah or Brookport and Metropolis?

Mr. Smith: At present we are handling the business in Paducah, have been handling them in Paducah, but we are now arranging to take part of this business across the river to get the benefit of the two cents per hundred pounds into the north.

349 Mr. Hines: Do you bring your lumber, the lumber that you use in that way, in by rail to Paducah or by river?

Mr. Smith: The lumber comes both by river and by rail, the poles come by the river.

Mr. Hines: The poles come by river altogether?

Mr. Smith: Yes, sir.

Mr. Hines: So you are not interested in the rate in on the poles. It is only the rate out so far as poles are concerned?

Mr. Smith: Yes, sir.

Mr. Hines: Do you contemplate moving that part of your business to Brookport and Metropolis in the event the Paducah Board of Trade gets the relief in this case it is seeking?

Mr. Smith: No, sir, I do not. I am waiting now to see the outcome of this decision before I open up a yard on the north side of the river.

Mr. Hines: What proportion of the lumber which you ship into Paducah from the south is locally consumed in Paducah or is it all shipped out again?

Mr. Smith: We do not handle the lumber in that way. We merely wholesale and do not consume any lumber in Paducah
350 or handle anything for the consuming trade.

Mr. Hines: Do you know how much lumber is annually shipped into Paducah from this southern territory, Mississippi Valley territory and other territory south?

Mr. Smith: I would not be good authority on that, not handling that class of stock for the consuming trade.

Mr. Hines: Do you know why—I believe you stated that there is no considerable amount or no amount of lumber rehandled at Paducah. Do you know why Paducah is not a rehandling market?

Mr. Smith: On account of the difference in the freight rates, which is two cents per hundred pounds, a man can hardly afford to see his way clear to establish in Paducah, when he can as well put his yards across the river and have the benefit of the two cents per hundred pounds into the northern territory, and practically one hundred per cent of the hardwood lumber goes into northern territory.

Mr. Hines: With what point or points does Paducah come into competition as a lumber market? Does it come in competition with Cairo?

Mr. Smith: Very largely, yes, sir.

Mr. Hines: What is the average loading of lumber per car, Mr. Smith?

Mr. Smith: You mean the weight?

Mr. Hines: Yes, the weight?

Mr. Smith: About 50,000 pounds.

Mr. Hines: Does it vary in the different kinds of lumber?

Mr. Smith: Yes, it varies owing to the different classes of wood.

Mr. Hines: But you would estimate the average at 50,000 pounds?

Mr. Smith: I would consider 50,000 pounds a conservative average per car.

Mr. Hines: Gentlemen, you may take the witness.

Cross-examination:

Mr. Callaway: Mr. Smith, you say that your business is confined to handling wholesale hardwood lumber, telephone and telegraph poles, that class of business?

Mr. Smith: Yes, sir.

Mr. Callaway: Now, you say that you get your telephone and telegraph poles in by the river?

Mr. Smith: Yes, sir.

Mr. Callaway: What rivers, or what river do you refer to?

Mr. Smith: The Tennessee and Cumberland.

352 Mr. Callaway: You get none of those poles from up the Mississippi River and the Ohio River?

Mr. Smith: No, sir.

Mr. Callaway: Now, where do you get your hardwood lumber?

Mr. Smith: Through Kentucky, Tennessee and Mississippi.

Mr. Callaway: Kentucky, Tennessee and Mississippi?

Mr. Smith: Yes, sir.

Mr. Callaway: Do you bring any of that lumber that you get in Tennessee and Kentucky up through the Cumberland or Tennessee Rivers, or do you bring them in by rail?

Mr. Smith: Some of the lumber we bring in by river, but very little. Some logs we bring out by river and have them manufactured at Metropolis, instead of having them manufactured at Paducah.

Mr. Callaway: Metropolis is in Illinois, across the river?

Mr. Smith: Yes, sir.

Mr. Callaway: Then you get some lumber you say in Mississippi?

Mr. Smith: Yes, sir.

Mr. Callaway: Whereabouts in Mississippi?

Mr. Smith: Well, along the Illinois Central Railroad principally.

353 Mr. Callaway: And the Y. & M. V. Railroad in Mississippi?

Mr. Smith: Well, along the Birmingham Division of the I. C. we get some.

Mr. Callaway: The Birmingham Division?

Mr. Smith: Yes.

Mr. Callaway: Whereabouts down on that line?

Mr. Smith: Well, we get some down around Paden, Miss.

Mr. Callaway: Now, in Tennessee you get your lumber along the line of the N. C. & St. L.?

Mr. Smith: Yes, sir, points like Parsons.

Mr. Callaway: You have no quarrel then, I take it, because your rates are less in than they are to Cairo?

Mr. Smith: We do not stop lumber in Paducah.

Mr. Callaway: I mean you have no quarrel with Cairo on account of the fact that you have less rates in than Cairo has from that territory? How does the rate to Cairo discriminate against you in Paducah from that territory?

Mr. Smith: Well, if we are going into Chicago—

Mr. Callaway: We are talking about coming up the river now. I haven't anything to do with the rates north of the river. This case concerns rates south of the river, and the only carriers I represent here are southern carriers.

354 Now, I take it that from the Tennessee and Kentucky territory you have no,—you must have no complaint against Cairo, because your rates are less to Paducah than they are to Cairo, certainly not higher?

Mr. Smith: Yes.

Mr. Callaway: That is true, isn't it?

Mr. Smith: That is a fact, if we are were to stop the lumber in Paducah, but we do not stop it in Paducah.

Mr. Callaway: Then as far as the rates from that territory are concerned, your complaint is that when you ship into Paducah and then ship out to some point in the west or the north, that your rates are not then equal to the Cairo rates?

Mr. Smith: That is right.

Mr. Callaway: You have no complaint then from the Tennessee and Kentucky territory of the rates into Paducah, provided the lumber is stopped at Paducah?

Mr. Smith: The complaint is this, that we have to carry the lumber across the river and yard that lumber there if we get ten cents into Chicago from the yarding point.

Mr. Callaway: You understand the case I am here to try is your complaint on the rates from these points you are speaking of to Paducah, Ky., discriminating in favor of Cairo. We are not discussing what your combination rates might be into and out of Paducah.

Mr. Smith: As a matter of course, we could not ship into Cairo, because we have got a six-cent rate from Paducah into Cairo.

Mr. Callaway: Yes, but you could ship from the same point of origin where you buy the lumber that you ship to Paducah, couldn't you?

Mr. Smith: Could ship by way of Cairo?

Mr. Callaway: Yes.

Mr. Smith: No, sir.

Mr. Callaway: If you bought lumber at a town in Tennessee, couldn't you ship it to Cairo? What is to keep you from doing it? There is a railroad runs to Cairo, doesn't it, people ship lumber from the same points that you buy lumber—they ship lumber to Cairo from those same points, don't they, or do they?

Mr. Smith: I don't think they do.

Mr. Callaway: Just ship to Paducah?

Mr. Smith: They do not in fact to Paducah, no; they ship direct to the markets.

356 Mr. Callaway: Mr. Smith, we ought to understand each other a little better. Understand I am not trying to mix you up or trick you at all.

Mr. Smith: I understand.

Mr. Callaway: So you can answer freely on these questions.

Mr. Smith: I assure you that I am endeavoring to do so.

Mr. Callaway: And I want you to feel assured I am not trying to take any advantage of you. I am trying to get at a fair, frank answer. What I am trying to find out is where you are hurt by Cairo from this territory we are talking about, and my question was if it is not true that from the entire territory in Tennessee and Kentucky your rates to Paducah are either less than to Cairo, or certainly not higher than the rates to Cairo from those same points of origin. That is a fact, isn't it?

Mr. Smith: Your question is out of line.

Mr. Callaway: Of course, my question is my own.

Mr. Smith: Well, that may be so, but I have got to admit that the rate into Paducah from these particular points, say Parsons, Tennessee, is lower than it is to Cairo, but I am not going via Cairo with this lumber, I am going in the other direction.

357 Mr. Callaway: But you may bring it into Paducah, and you do not pay as much as if you shipped that same lumber from that same point of origin to Cairo, do you?

Mr. Smith: No, I do not, naturally.

Mr. Callaway: That is what I thought. What trouble are you having with regard to shipping lumber from the south to Cairo—shipping lumber from the south to Paducah?

Mr. Smith: Well, that does not apply into these points like Tennessee the same as it does into Arkansas, that is true.

Mr. Callaway: I do not represent any road in Arkansas. I only represent roads east of the Mississippi and I have confined my questions to that territory. When you go down in Mississippi, down into the hard wood territory, say around Vicksburg, Helena, Baton Rouge, and throughout what is recognized as the hard wood section

of Mississippi, you pay the same rates on hardwood to Cairo as you do to Paducah, don't you?

Mr. Smith: Well, those points vary. Some of them are less into Cairo than they are into Paducah.

Mr. Callaway: Name some of those points.

Mr. Smith: I cannot name them. The rate clerk will have
358 to do that.

Mr. Callaway: But you know it to be a fact, do you not, that in what is recognized as the hard wood territory of Mississippi that the rates to Cairo and to Paducah are the same?

Mr. Smith: I know it not to be a fact.

Mr. Callaway: Just mention any point in the hardwood section where it is not true, just mention one.

Mr. Smith: I do not call these points to mind. I am not familiar with the points on the tariff rates as applying from the different points into Paducah and into Cairo.

Mr. Callaway: When you get back into the pine section of Mississippi and Alabama, what is recognized as the yellow pine section away from the rivers, the rates to Paducah and to Cairo both are higher, are they not, than the rates on hardwood or any other lumber that is closer onto the Mississippi River, and along the rivers that are tributary to the Mississippi, that is true, isn't it?

Mr. Smith: Are higher into Paducah than they are into Cairo?

Mr. Callaway: You take points below Jackson, Miss., Brook-
Haven, go down in what is known as the yellow pine belt, of course,
there is some hard wood down in that territory, but from
359 that territory all rates on pine, hardwood or any other lumber
that is cut away back from the Mississippi River, are higher
to Cairo, are they not, from that territory than they are from the
hardwood section which lies along the Mississippi River and its
tributaries? Those rates are higher to Cairo than they are along
the Mississippi, are they not?

Mr. Smith: I am not familiar with that, I cannot answer that.

Mr. Callaway: The rates from this territory are higher to Paducah,
are they not, an equal distance or less distances, than the rates on
lumber from the hardwood sections along the Mississippi River.
You know that to be a fact, don't you?

Mr. Smith: No, I am not familiar with these rates.

Examiner Esch: I presume, Mr. Callaway, that the complainant
will put on a rate man who is familiar with the rates.

Mr. Hines: Yes.

Mr. Callaway: But this is the man that is complaining. Rate
clerks are mere machines. They can point out discrepancies and
discriminations from the rate book where they appear, but the man
who complains is the real complainant. I want to find out
360 from him what his trouble is. He has not shown any yet,
with all due respect to the witness, from what I have gathered.

Mr. Smith: I do not carry a hundred different rates in my mind.
That is not part of my business in my office. I know that we are
discriminated against, and I positively know from facts and figures
in dollars and cents exactly in accordance with the statement that

I have made. Now, we will put on a rate clerk, as the gentleman states, that will verify these rates. I do not carry them in my mind.

Mr. Hines: The witness can testify as to the territory from which he gets his lumber, and when the rate man is introduced, then he will show whether or not, and to what extent the witness is injured.

Mr. Callaway: Is the rate man injured?

Mr. Hines: No, but then the rate man can testify to the facts and show just exactly the extent to which this witness is injured.

Mr. Callaway: This man can certainly tell more about his business than a rate clerk.

Mr. Norman: What do your witnesses know about it? How are they affected?

361 Mr. Callaway: They know what the rate book shows. This man is affected because he is the complainant.

Mr. Smith: I am not a rate clerk. We have a man who helps us with the rate, that is not my end of the business.

Mr. Callaway: We will shorten this thing if we can. All I want to know is for you to point out to the Commission wherein you are hurt on the rates from the south up to Paducah as compared to Cairo?

Mr. Smith: We have a rate man who can tell you what these rates are. I do not carry those rates in my mind.

Mr. Callaway: How do you know you are hurt?

Mr. Smith: I know it from facts and figures that have been figured out. I cannot quote these rates, because I am not supposed to carry them in my mind, the rates compared to one point as against another.

Examiner Esch: I don't think there will be any necessity of going into rate matters with this witness who is not familiar with the rates themselves.

Mr. Callaway: He has not pointed out, your Honor, I respectfully submit, a single instance where he could say as far as Cairo is concerned what the Cairo rates are. He certainly must know where his trouble is. He has pointed out that he can ship
362 into Paducah territory on a combination of rates, but I do not represent the lines north of the river. I am trying to find out wherein the lines south of the river in delivering lumber to Paducah on the present rate basis from some sections the same as Cairo, from some other sections slightly higher—wherein he is hurt.

Examiner Esch: It is quite evident that the movement which is concerned here is merely a movement to Paducah locally which is probably moved in for the purpose of reshipping to northern territory, consequently it seems evident to me that the entire movement must be taken into consideration so far as that is concerned.

Mr. Callaway: I submit we are here on a very different case from that which your Honor understands. The complainant in this case is not complaining about anything except the rates to Paducah, Ky. He is not complaining of any through rates from Des Arc or from anywhere in Mississippi and Louisiana to Chicago. He is complaining of the rates to Paducah. Let us get on understandable

ground right now. This rate complained of here is the rate to Paducah, Ky., as compared with Cairo, and the lines that I represent here are not involved, and the lines west of the river largely are not involved in any rates whatever to C. F. A. territory. Of course, the Illinois Central is on a different basis through Cairo, but the Southern Railway, the N. C. & St. L. and the other lines that I am here representing do not move beyond this river. Memphis is the largest wholesale lumber market in this country, isn't it, and so recognized by the Commission?

Mr. Smith: Yes, sir.

Mr. Callaway: They cannot ship lumber into Memphis and ship lumber out of Memphis on a combination of rates that will equal Cairo, can they?

Mr. Smith: I don't know; I am not familiar with the rates.

Mr. Callaway: You have no competition then with Memphis?

Mr. Smith: Well, some.

Mr. Callaway: Sir?

Mr. Smith: I said I have some competition.

Mr. Callaway: And yet they do not have the rates that you are asking for, do they?

Mr. Smith: I presume not.

Mr. Callaway: Do you know of any place except Cairo where the rates break, where the rates through that point are the rates in and the rates out?

364 Mr. Smith: I do not get the idea of your question.

Mr. Callaway: Do you know any place where a shipper can ship lumber into a town and ship it out to some other point of destination through a combination of rates that is equal to the through rate except via Cairo, Illinois.

Mr. Norman: If the Examiner please, we submit that those are not matters within the knowledge of the witness. He does not know about those things, could not know and attend to his business.

Examiner Esch: You may state whether you know or not.

Mr. Smith: I could not say that I know. You take the river rates, they are all one rate, and I happen to be familiar with those. You take the river rate into Brookport, Metropolis or Joppa, it is nine cents. The rate beyond is ten cents into Chicago, making 19 cents from all Tennessee River points into Chicago, whereas that same rate from the Tennessee River around into Paducah would be nine cents, and would be 12 cents from Paducah to Chicago, making 21 cents from Tennessee River points into Chicago, a difference of two cents per 100 pounds.

Mr. Callaway: But I don't understand you to be complaining of any rates from Tennessee. Your complaint is confined to 365 the points in Mississippi, Louisiana and Arkansas, is it not?

Mr. Smith: I don't understand it that way.

Mr. Callaway: The complaint speaks for itself, so there is no use spending time on that. That is all.

Mr. Wright: Mr. Smith, do you purchase any lumber in Arkansas and Louisiana?

Mr. Smith: No, sir, I do not.

Mr. Wright: None whatever?

Mr. Smith: No, sir.

Mr. Wright: You have no complaint against the rates from points west of the Mississippi River?

Mr. Smith: Personally or from my own standpoint, my personal attitude I might say that I am not now buying lumber at the present time in that territory. However, if conditions were different I might want to operate in that territory.

Mr. Wright: As I understand it, at your Paducah yard you simply handle telegraph poles.

Mr. Smith: That is all at Paducah, poles.

Mr. Wright: To what points are they shipped from Paducah?

Mr. Smith: Well, the greater part of them are shipped
366 north of the river.

Mr. Wright: And to whom are they sold?

Mr. Smith: To various telephone, telegraph and electric light companies, and street railways.

Mr. Wright: I think that is all. You stated you have no personal interest.

Mr. Hines: What difference would a difference of two cents per hundred pounds on the freight rate on poles make in your profits in a year?

Mr. Smith: You mean——

Mr. Hines: What percent of your profits would it be?

Mr. Smith: Out of Paducah it would amount to \$10 per car, and we would ship north of the river about 300 cars, about \$3,000.

Mr. Hines: How do the rates to Brookport and Metropolis from this southern territory about which we have been talking compare with the rates to Paducah? They are the same, are they not? The rates in the south to Brookport and Metropolis are the same as they are into Paducah, are they?

Mr. Smith: You mean that to apply on poles or stuff coming from the river?

Mr. Hines: I mean hardwood lumber that you handle
367 at Brookport and Metropolis. I am not speaking of the poles, because our rates in from the south are the same to Brookport and Metropolis that they are to Paducah.

Mr. Wright: Mr. Smith said he did not know anything about it.

Mr. Hines: I am asking him whether he does or does not know.

Mr. Smith: Those rates vary, as I understand, and I am not familiar enough with the rates to give an intelligent answer.

Mr. Hines: I want to know whether you know or not.

Mr. Smith: No, sir.

Mr. Hines: That is all.

(Witness excused.)

C. L. FAUST was called as a witness and having been duly sworn, testified as follows:

Direct examination:

Mr. Hines: Mr. Faust, where do you reside?

Mr. Faust: In Paducah.

Mr. Hines: Where do you do business?

Mr. Faust: Well, I have a yard at Cairo and also one at Brookport.

368 Mr. Hines: You say you have a yard at Cairo and also one at Brookport?

Mr. Faust: Yes, sir.

Mr. Hines: What is the nature of your business?

Mr. Faust: I am in the wholesale hardwood lumber business. That is an assembling yard, our distributing yard.

Mr. Hines: Why is it that as you reside in Paducah you do not do business in Paducah?

Mr. Faust: On account of the freight rate, I cannot bring lumber in here and compete with Cairo and with other markets.

Mr. Hines: Would you or not prefer to do business in Paducah?

Mr. Faust: I certainly would. I live here.

Mr. Hines: How long have you been engaged in business in Cairo and Brookport?

Mr. Faust: I began business in Brookport ten years ago, and I had to put in a yard at Cairo about three years ago this spring to take care of the business from the south that I could not bring into the Brookport yard on a competing basis.

Mr. Hines: What difference did you find on lumber between the rates to those points and the rates to Paducah?

369 Mr. Faust: I found one point in one branch I think it is from Oxford, Water Valley and Grenada, I could bring that lumber into Brookport for 13 cents whereas I can carry it into Paducah for 13. After I got out there on the Birmingham division which starts in at a station called Red Bay, Alabama, I shipped that lumber into Brookport and it cost 14 cents per 100 pounds, and at the same time I could have carried it into Cairo for 12 cents. After paying out about \$1,400 excessive freight, I felt I could not stand that any longer, so I had to open up a yard in Cairo.

Mr. Hines: What did you find the difference to be between your rate to Cairo and Paducah?

Mr. Faust: From the Birmingham branch I found it to be two cents, and from other points, except this one branch, I believe it is from one to three cents, one, two and three cents from all points I have ever handled lumber.

Mr. Hines: Why is it as your business is located at Cairo that you do not live there, rather than Paducah?

Mr. Faust: Well, one thing I am afraid of the town from the standpoint of floods, and another, I have had hopes some day I could change my yard. I have my yard there against my wish. I don't want to live in the town, I don't think it is healthy.

370

Mr. Hines: Why have you hoped that you might be able to change your yard?

Mr. Faust: I thought maybe that the freight rate would be changed some day, and when they talked of the Burlington Railroad I thought the time had come when these freight rates would be equalized.

Mr. Hines: To what extent is Cairo subject to overflow?

Mr. Faust: Well, we have had two rises there in 1912, and 1913, that each time I would have sold my yard for fifty cents on the dollar and thought I was making a good deal. That was the scare that we had there, people know that.

Mr. Hines: What proportion of the lumber which is shipped into Cairo from the south is locally consumed?

Mr. Faust: In hardwood I would not think there was as much as two per cent consumed. I am quite sure of it.

Mr. Callaway: At Cairo?

Mr. Faust: At Cairo? I don't know any place there that consumes lumber except the Vehicle Supply Company which consumes hickory.

Mr. Hines: How much lumber comes in by water to Cairo, what per cent of the lumber that is handled there, do you know?

Mr. Faust: I don't know, but it is a very small per cent, a very small percentage.

Mr. Hines: Why is it necessary to have points of concentration for the rehandling of lumber instead of shipping it direct from the point of production to the ultimate point of consumption?

Mr. Faust: Well, the average little sawmill, the average sawmill that produces hardwood lumber is not able to finance itself so as to carry a large stock of lumber and has to sell to the wholesale dealer, and as a rule they sell in from one to five carload lots, and that lumber consists of poplar and oak, which varies in thickness from one to two inches, and it grades about four different grades, while on the other hand, the consuming trade order one thickness and one grade, and therefore you have got to have a large stock of hardwood to give the consumer what he wants.

Mr. Hines: What is considered by the rehandler of lumber as a fair average net profit per thousand feet on a year's business?

Mr. Faust: That varies in good and bad years, but I will say from one to two dollars, with an average of \$1.50 will be satisfactory.

Mr. Hines: What difference in that profit would two cents per 100 pounds make?

Mr. Faust: It would make about 90 cents—80 cents a thousand anyway, that two cents a hundred. That would make about 50 per cent of your net profit.

Mr. Hines: What is the average loading of lumber per car?

Mr. Faust: Well, that varies. In our business I would venture to say 45,000 pounds would be the average, while some sizes average more than that.

Mr. Hines: That is all, Mr. Faust. Gentlemen you may take the witness.

Mr. Callaway: I have no questions.

Cross-examination:

Mr. Wright: Mr. Faust, do you purchase any lumber from points west of the Mississippi River?

Mr. Faust: Two or three points, yes, sir, but not extensively.

Mr. Wright: At what points?

Mr. Faust: At Earl, Arkansas, that is on the Frisco, I believe, and then we purchase some in Louisiana.

Mr. Wright: At what points in Louisiana?

373 Mr. Faust: Well, I think Colfax is the only point I can think of now. We have bought a few cars there.

Mr. Wright: I don't think of anything more I care to ask.

Mr. Humburg: You operate both of your yards at Brookport and at Cairo?

Mr. Faust: Yes, sir.

Mr. Humburg: You have none at Paducah?

Mr. Faust: No, but I would be glad to have one here.

Mr. Callaway: Where is Brookport, on the north side of the river?

Mr. Faust: Yes, sir.

(Witness excused.)

W. R. WARD was called as a witness, and having been duly sworn, testified as follows:

Direct examination:

Mr. Norman: Mr. Ward, what is your business?

Mr. Ward: My occupation is rate man with the Louisville Traffic Bureau, it being my business to prepare data or rate information in connection with hearings before the Interstate Commerce Commission, State Railroad Commissions, and similar matters.

374 Mr. Norman: You also audit freight bills?

Mr. Ward: The Bureau does that work, yes, sir.

Mr. Norman: What experience have you had, Mr. Ward, in railroad work, and particularly in rate work?

Mr. Ward: I have had over thirty years' experience as a rate man in the traffic department of several lines: the Pennsylvania, Cincinnati four years; the General Manager's office of the Continental Fast Freight Line at Cincinnati, four years; C. N. O. & T. P. Railway general freight office at Cincinnati six years; with the Chesapeake & Ohio Southwestern Railroad, which is now the Louisville division of the Illinois Central Railroad as chief clerk in the General Freight Department for two years and over; with the Southern Railway, General Freight Department, at Washington about five years, in addition to— With the Illinois Central Railroad I was Assistant Chief Clerk in the General Freight Department at Louisville for about a year, and eleven years with the Southeastern Mississippi Valley Association at Louisville, Ky.

Mr. Norman: Have you been employed by the complainants in this case to prepare data showing the rate adjustment on lumber inbound from the south at Paducah as compared with Cairo,
375 Illinois?

Mr. Ward: I have.

Mr. Norman: What railroads serve Paducah from the south?

Mr. Ward: The Illinois Central Railroad and the N. C. & St. L. Railroad.

Mr. Norman: What railroads serve Cairo from the south?

Mr. Ward: The Mobile & Ohio, Illinois Central and St. Louis, Iron Mountain & Southern.

Mr. Norman: The St. Louis, Iron Mountain & Southern serving from west of the Mississippi River?

Mr. Ward: From west of the Mississippi River.

Mr. Norman: How does traffic naturally move from Mississippi Valley territory, Illinois Central, and Yazoo & Mississippi Valley points and points west of the river, south of a line from Memphis to Little Rock, when said traffic is destined through Paducah or Cairo?

Mr. Ward: Well, when it originates at points on the Illinois Central Railroad, naturally it is forwarded by that line to both Cairo and Paducah.

Mr. Norman: To what extent does it move over a common route when destined to those two places?

Mr. Ward: You mean the territory——

376 Mr. Norman: Yes, how far up the line does it come by a common route?

Mr. Ward: To Paducah and Cairo.

Mr. Norman: I know, but where does the traffic that is going to Cairo leave the traffic that is going to Paducah?

Mr. Ward: At Fulton, Ky.

Mr. Norman: How far is that from Paducah?

Mr. Ward: 45 miles.

Mr. Norman: And how far from Cairo?

Mr. Ward: 49 miles.

Mr. Norman: Such slight difference as there exists then, in distance from this territory in favor of Paducah?

Mr. Ward: Four miles on all business that moves through Fulton over the Illinois Central.

Mr. Norman: Cairo, Illinois, I believe is located on the north bank of the Ohio River, and Paducah on the south bank, and therefore the haul from this southern territory to Cairo involves a movement across the Ohio River that is not involved on traffic to Paducah.

Mr. Ward: That is correct.

377 Mr. Norman: I hand you a statement with the heading: "Comparative statement of rates in cents per 100 pounds on lumber and lumber articles carloads from points in Mississippi Valley territory to Paducah, Kentucky, and Cairo, Illinois." Please state whether or not you prepared that statement. If so, whether or not it is correct, and if correct, please file it as a part of your testimony, marked Exhibit number one.

Mr. Ward: I prepared that statement, it is correct, and I desire to file it as part of my testimony.

(The statement so offered and identified was received in evidence and thereupon marked "Ward, Exhibit No. 1, received in evidence September 17, 1913," and is attached hereto.)

Mr. Norman: Mr. Ward, that statement shows that the rate on lumber from Bogalusa, La. to Paducah, Ky. a distance of 570 miles is 18 cents per 100 pounds. Please state what the same statement shows the rate to be from the same point to Cairo, Ill., a distance of 571 miles?

Mr. Ward: This exhibit shows the rate from Bogalusa, La. to Cairo, Ill. to be 14 cents per 100 pounds.

Mr. Norman: The rate from Des Arc, Ark. to Paducah, a distance of 267 miles is shown by the statement to be 17 cents per 100 pounds.

Please state what the exhibit shows the rate from the same point to Cairo, Ill., a distance of 271 miles to be?

Mr. Ward: The exhibit shows the rate from Des Arc, Ark. to Cairo, Ill. to be 11 cents per 100 pounds.

Mr. Norman: Please state how that traffic moves, by what route it moves?

Mr. Ward: Via Memphis, Tenn. on the Illinois Central Railroad, I understand.

Mr. Norman: Being a common route up to Fulton, Kentucky?

Mr. Ward: Being a common route up to Fulton, Kentucky.

Mr. Norman: I hand you a statement with the heading: "Comparative statement of rates on lumber and lumber articles, carloads, from Mississippi Valley shipping points to eastern seaboard cities, and interior eastern points shipped under local rates to Paducah, Ky. and Cairo, Ill., rehandled or manufactured at, and reshipped under the existing rates from those points, showing the discrimination against Paducah in favor of Cairo.

Mr. Callaway: I object, your Honor, to any testimony that relates to rates out of Paducah, and insist that the complaint is confined to the question of the rates into Paducah as compared with the rates into Cairo. I do not like to repeat these objections, provided

379 it is understood that we do object to any testimony with reference to any rate whatsoever out of Paducah.

Mr. Norman: We have very little other testimony along that line, and the object, Mr. Examiner, is to show the hardship resulting from the rate adjustment that exists; in other words, we think that it is competent and perhaps incumbent on us to show that we have no compensating advantages that offset our disadvantages, and this statement is filed for that purpose.

380 Mr. Callaway: Of course we know that this is not a question of transit or proportional rates or reshipping rates, and without encumbering the record, if it may be understood that this objection goes to all testimony that relates to rates out of Paducah, I will not repeat it.

Examiner Esch: Yes, that may be understood, and with that objection on record, the evidence will be admitted.

Mr. Norman: Please state whether or not you prepared that statement, if so, whether or not it is correct, and if correct please file it as part of your testimony as Exhibit Number 2, Ward.

Mr. Ward: I prepared that statement; it is correct, and I desire to file the same as part of my testimony.

(The statement, so offered and identified, was received in evidence and thereupon marked "Ward Exhibit No. 2, received in evidence September 17, 1913," and is attached hereto.)

Mr. Norman: This exhibit shows the rate on lumber from Bogalusa, Louisiana, to Paducah, Kentucky, to be 18 cents per one hundred pounds, and from Paducah to New York to be 29 cents, or a total of 47 cents per one hundred pounds, from Bogalusa,

381 Louisiana, to New York, a distance of 1357 miles, where the lumber is rehandled at Paducah, Kentucky. Please state the rate as shown by that exhibit from the same point of origin to New York, where the lumber is rehandled at Cairo, Illinois, the total distance to New York via Cairo being 1,659 miles.

Mr. Ward: The rate shown by the exhibit on lumber, carloads, from Bogalusa to New York, where the lumber is rehandled at Cairo, is 41 cents per one hundred pounds.

Mr. Norman: The same exhibit shows the rate from Des Arc, Arkansas, to Paducah to be 17 cents per one hundred pounds on lumber other than cottonwood and gum, and from Paducah to New York 29 cents per one hundred pounds, or a total rate of 49 cents for a total distance of 1,354 miles, where the lumber is rehandled at Paducah. Please state what the total rate is where lumber moves via Cairo, a distance of 1,359 miles, and is rehandled there instead of at Paducah, and what the difference is in favor of Cairo?

Mr. Ward: The rate as shown by the exhibit on lumber other than cottonwood and gum in carloads from Des Arc, Arkansas, to New York, where the lumber is rehandled at Cairo is 38 cents per one hundred pounds, a difference in favor of Cairo of 8 cents per one hundred pounds.

382 Mr. Norman: Now, Mr. Ward, how far south do you go before this discrimination on inbound rates on hardwood lumber as against Paducah in favor of Cairo begins to appear?

Mr. Ward: The Illinois Central Railroad publishes rates as favorable to Paducah as compared with Cairo as any other line east of the Mississippi river.

Jackson, Mississippi, is about the dividing point. South of Jackson, Mississippi, the general basis, is on pine two cents higher to Paducah than to Cairo, and the same difference applies on other kinds except cottonwood and gum. Cottonwood and gum, where they publish special commodity rates, they are the same to Paducah and Cairo.

Mr. Norman: As I understand your evidence, south of Jackson, Mississippi, rates on pine and hardwood from points on the Illinois Central line, and as I understand it you say that is typical of the other lines, are lower to Cairo, Illinois, than to Paducah, Kentucky?

Mr. Ward: Yes, sir.

Mr. Norman: Do you know of any reason why the rates from this territory should be lower than the rates from Paducah, Kentucky?

Mr. Ward: I do not.

383 Mr. Norman: Now, on lumber originating at points in Arkansas on and south of the line from Memphis to Little Rock, what line is that?

Mr. Ward: That is the Chicago, Rock Island & Pacific Railway.

Mr. Norman: I understood you to testify that the natural route for that traffic would be to Memphis by western lines, and then from Memphis via the Illinois Central to Paducah and Cairo?

Mr. Ward: That is as to the Chicago, Rock Island & Pacific Railway.

Mr. Norman: Do you know of any reason why the rates from that territory west of the Mississippi river on and south of the Little Rock-Memphis line should be lower to Cairo than to Paducah, Kentucky?

Mr. Ward: I do not.

Mr. Norman: Are they as a matter of fact lower to Cairo than to Paducah?

Mr. Ward: They are as a rule.

Mr. Norman: I believe that statement that you have filed marked Ward Exhibit 1 includes one of these Arkansas points?

Mr. Ward: Des Arc, Arkansas, and Alexandria, Louisiana.

384 There are two points there.

Mr. Norman: Two points west of the Mississippi river?

Mr. Ward: On the Rock Island railroad.

Mr. Norman: Are the points from which the rates to Paducah and Cairo are the same nearer to Paducah and Cairo than the points from which rates to Cairo are lower than the rates to Paducah?

Mr. Ward: The Illinois Central Railroad, as I referred to a moment ago, is a representative line. They publish the same rate on hardwood lumber from points on their line, Memphis and north, and from points on their line from Jackson, Mississippi, to Cairo direct as far south as Holly Springs, Mississippi; in other words, they publish the same rate from all of those points to Cairo that they do to Paducah.

Mr. Norman: It is when they get south of that and further distant that the difference begins?

Mr. Ward: South of that to their extreme distant points is the higher difference; in other words, they seem to have reversed the usual order of rate making.

Mr. Norman: The usual order is that where there is a difference, it has a tendency to become less and disappear as the distance increases?

385 Mr. Ward: That has been my experience.

Mr. Norman: Are there not a great many points on the Rock Island from which through rates are published to Cairo, but none to Paducah?

Mr. Ward: That is true of the entire system. They publish through rates to Cairo, but they do not publish rates to Paducah.

Mr. Norman: When there is no through rate published to Paducah, how does the Paducah rate make?

Mr. Ward: The lowest combination, which is the best available rate, is six cents on Cairo, with the exception of some points that are immediately adjacent to Memphis, Tennessee, where the local into Memphis and the published rate out will sometimes make a lower rate than the Cairo combination.

Mr. Norman: Do you know of any reason why through rates should not be published from these points to Paducah, Kentucky?

Mr. Ward: I do not.

Mr. Norman: I believe you stated that the rates from all points on cottonwood and gum were the same to Paducah as to Cairo?

386 Mr. Ward: Where they have a special commodity rate on cottonwood and gum, it is included under the general head. There might be exceptions in some cases.

Mr. Norman: Do you know of any reason that would compel the making of rates on cottonwood and gum the same to Cairo and Paducah that would not be equally applicable to hardwood?

Mr. Ward: I do not.

Mr. Norman: You may take the witness.

Cross-examination.

Mr. Callaway: Mr. Ward, referring to your Exhibit Number 1, I see that you have two points in Mississippi in there, Gershorn, Mississippi, and Houston, Mississippi, and that the rate from Houston to Paducah is 17 cents. Isn't in fact the lumber rate to Paducah from Houston 14 cents?

Mr. Ward: It is on lumber.

Mr. Callaway: And that 17 cent rate is on staves and heading?

Mr. Ward: On staves and heading, yes, sir.

Mr. Callaway: Not on lumber as your statement here states?

Mr. Ward: The rate on lumber is the same to both Paducah and Cairo, 14 cents.

387 Mr. Callaway: Therefore, that ought to be 14 cents instead of 17, or your 17 should show that it only applies on staves and heading?

Mr. Ward: That is correct. I had it in my statement here. I have a notation on my original statement showing it applies on staves and heading, carloads only, lumber carloads 14 cents in the case of Mr. Washburn's tariff, I. C. C. number 103.

Mr. Callaway: That is, you should correct Houston to 14 cents on lumber to Paducah?

Mr. Ward: 14 cents.

Mr. Callaway: Take the 12½ cent point, isn't the rate from Gershorn, Mississippi, a proportional rate, that is, to Thebes or Cairo or beyond?

Mr. Ward: I do not understand that it is.

Mr. Callaway: Are you sure that you have got a correct rate here from Bogalusa, Louisiana, 18 cents, to Paducah? Isn't that 6?

Mr. Ward: 18 cents, that is to Paducah.

Mr. Callaway: That is what your data shows, is 18 cents.

Mr. Ward: Yes, sir.

Mr. Norman: Have you got the tariff reference?

Mr. Ward: The tariff authority is Warren's New Orleans
388 Great Northern Railroad tariff, I. C. C. Number 230.

Mr. Callaway: Our tariffs carry rates on lumber from points on that New Orleans Great Northern, or whatever it is, only two cents over Illinois Central stations.

Mr. Ward: No, the same as Illinois Central stations.

Mr. Norman: Let us get this straightened out. How does one tariff happen to carry it the other way, do you know?

Mr. Bryan: I don't know, Mr. Norman, I don't know anything about this tariff.

Mr. Callaway: The only tariff we had access to shows a rate of 16 cents. I was trying to show whether it might not have been an error as it was with reference to the Houston rate.

Mr. Norman: We just want to get this straight.

Mr. Callaway: That is all.

Mr. Bryan: This tariff gives 16 cents as applying on all lumber moving from Bogalusa via the Illinois Central Railroad and Jackson, Mississippi.

Mr. Norman: Is Bogalusa a point on your line?

Mr. Bryan: No, it is on the New Orleans Great Northern.

Mr. Norman: What is this tariff reference?

Mr. Bryan: It is on specific concurrence F. X. 2. It oc-
389 curs in that particular tariff and no other tariff.

Mr. Callaway: I wish to ask Mr. Ward if he found any point other than that, if that is correct, on the Illinois Central or any of those connecting lines down there, the Gulf & Ship Island, or the N. O. G. N., or any of those other connecting lines of the Illinois Central through the states of Mississippi and Louisiana where there was more than two cents difference as between Cairo and Paducah?

Mr. Ward: My record here shows the Alabama Central Railroad.

Mr. Callaway: That is not in Mississippi, you know.

Mr. Ward: Well, you ought to limit your question to Mississippi.

Mr. Callaway: The complaint does not go outside of Mississippi and Louisiana.

Mr. Ward: Fernwood and Gulf Railway.

Mr. Callaway: Those rates are uniformly two cents higher?

Mr. Ward: Two cents, the Gulf & Ship Island Railway, two cents.

Mr. Norman: What do you mean by two cents?

Mr. Ward: Two cents higher to Paducah than to Cairo.

Mr. Callaway: My question was if we found any point in
390 Mississippi or Louisiana east of the Mississippi River under attack here where rates to Paducah over the Illinois Central or any connection with the Illinois Central are more than two cents higher than the rates to Cairo.

Mr. Ward: I will see. The Mobile & Ohio Railroad in Mississippi publish a rate from stations on their Starkville and Aberdeen branch and from local stations on their main line from Mayhew to Wheeler, Mississippi, to Cairo of 12 cents. They publish no

through rate to Paducah, which would leave the Paducah rate on combination, or 18 cents.

Mr. Callaway: Let us come back now to our question, whether you find on the lines of the Illinois Central Railroad in Mississippi or Louisiana, or any of those connections of the class which I have already referred to, the Gulf & Ship Island, New Orleans Great Northern and the Mississippi Central, which are hardly tap lines, but those tributary lines down there.

Mr. Ward: The tributary lines to the Illinois Central Railroad are not higher than two cents higher than Cairo.

Mr. Callaway: In a considerable portion of the territory it is the same?

Mr. Ward: The two cents is applied all the way through.

391 Mr. Callaway: The Mobile & Ohio does not reach Paducah?

Mr. Ward: Their rails do not reach Paducah, no, sir.

Mr. Callaway: You gave certain portions that you described on the lines of the Illinois Central and certain of its connections in these territories which are what we might call pine territories?

Mr. Ward: Principally, yes, sir.

Mr. Callaway: I take it, Mr. Ward, from your statement of your engagement with several railroads at Cincinnati, Louisville and Washington, that you have lived in that section of the country up there, and your rate life and your railroad experience has largely been in those centers?

Mr. Ward: I have been located in Cincinnati, Washington and Louisville practically, that is all.

Mr. Callaway: That is all.

Mr. Norman: You were eleven years with the Southeastern Mississippi Valley Association?

Mr. Ward: Yes, and at Louisville, as far as working in the territory is concerned, I have had some experience in that particular territory that is under complaint now.

Mr. Callaway: I am speaking of your physical situation, not the fact that you handled tariffs.

392 Mr. Ward: That is right.

Mr. Callaway: You were up in that territory and that has been your life?

Mr. Ward: Yes, sir.

Mr. Norman: These points that you have used in your exhibits were selected by you because they were points that were furnished you by shippers at Paducah as points from which they actually shipped?

Mr. Ward: That is correct.

Mr. Norman: In other words, you did not just select them at random?

Mr. Ward: Oh, no, they were points that were given me as representative shipping points where lumber actually moved from.

Mr. Norman: On staves and heading—

Mr. Wright: Is this re-direct?

Mr. Norman: Yes.

Mr. Wright: You had better wait until I get through.

Mr. Norman: I thought you were through.

Mr. Wright: I have not asked any questions.

Mr. Ward, wherein does Exhibit number 1 differ from the table set forth in your petition, or is there any material difference between the two?

393 Mr. Ward: I will say so far as rates are concerned, they are the same I believe.

Mr. Wright: Do you contend that the rates set forth in Exhibit Number 1 apply via all lines that are made parties to the petition?

Mr. Ward: No, sir, I do not.

Mr. Wright: Nowhere on Exhibit 1 have you shown by what routes these rates apply, have you?

Mr. Ward: No, sir.

Mr. Wright: In your direct testimony you made some reference to rates applying from stations south of a line drawn from Memphis to Little Rock, or the line of the Rock Island Railroad.

Mr. Ward: Yes, sir.

Mr. Wright: Why did you use Des Arc in this exhibit?

Mr. Ward: Des Arc was included in that exhibit for the reason that it was one of the points embodied in the complaint from which shipments are actually moving.

Mr. Wright: It is not south of the proposed line?

Mr. Ward: It is a branch line, it is on a branch line of the line running from Memphis to Little Rock.

Mr. Wright: Not south of the Rock Island from Memphis
394 to Little Rock, is it?

Mr. Ward: It is not—it is located—

Mr. Wright: Via what routes are these mileages?

Mr. Ward: These mileages are figured by the routes over which the rates apply.

Mr. Wright: In other words, how did you obtain your first mileage, 552 miles to Paducah? Can you state that? If you haven't it there, take Des Arc, we referred to that before, that will show the same thing.

Mr. Ward: I figured the Rock Island, Little Rock to Memphis, 101 miles, Illinois Central 170 from Memphis to Cairo, 166 from Memphis to Paducah.

Mr. Wright: Then your 267 miles is figured via Memphis?

Mr. Ward: Via Memphis.

Mr. Wright: Does the rate shown here apply via Memphis?

Mr. Ward: That would apply via Memphis.

Mr. Wright: You are sure of that, are you? Give the tariff reference to the tariff which names that rate?

Mr. Ward: It is not a through rate, it is a combination, I think.

Mr. Wright: Is it not a fact that is the combination on Cairo and not the combination on Memphis?

395 Mr. Ward: I will soon see about that. The through rate is made on Cairo combination as shown.

Mr. Wright: And your mileage is figured on the Memphis combination?

Mr. Ward: Figured out on the Memphis combination.

Mr. Wright: Turn to your Exhibit Number 2. In the last column you show various differences in the rates as they apply from certain producing points to New York. Do you wish to infer that that is the difference up to Paducah?

Mr. Ward: That is the combined difference of the rates into Paducah and the rates out of Paducah.

Mr. Wright: It is not the measure of the difference in the rates up to Paducah?

Mr. Ward: Not entirely. The proportion north is two cents of those amounts shown.

Mr. Wright: I think you stated that the normal route or the route over which shipments would move was via Memphis, Fulton and the Illinois Central. Is that true as to the Iron Mountain or the Rock Island Lines or the Cotton Belt Line?

Mr. Ward: It is not true as to the Iron Mountain and the Cotton Belt. The rates apply over their lines direct to Cairo.

Mr. Wright: Those two lines have direct lines into Cairo. Do they not?

Mr. Ward: Yes, sir.

Mr. Wright: And they apply their rates to Cairo, and that is a line rate?

Mr. Ward: Yes, sir.

Mr. Wright: How are through rates made to Paducah?

Mr. Ward: In the absence of any through published rate, I suppose it would be on combination.

Mr. Wright: What combination?

Mr. Ward: The lowest combination would usually be Cairo.

Mr. Wright: That would be the Cairo combination, would it not?

Mr. Ward: Usually. There may be exceptions where the Memphis combination might make a lower rate.

Mr. Wright: Now, shipments destined to Paducah via the Iron Mountain would move through Cairo and have to cross the river here to get into Paducah there, would they not? That is, they cross both rivers, the Ohio and the Mississippi?

Mr. Ward: Well, I don't know whether that is the case or not.

It is possible I should think to apply the rates through Memphis.

Mr. Wright: But the rates do not apply via Memphis, do they?

Mr. Ward: The combination does not apply that way, but they can operate the rate via Memphis if they desire.

Mr. Wright: Does the Iron Mountain or the Cotton Belt or the Rock Island make any through rates from Louisiana points to Cairo?

Mr. Ward: Yes—you mean Paducah, don't you?

Mr. Wright: I mean Paducah.

Mr. Ward: That is what I thought. They do not.

Mr. Wright: Now, Mr. Ward, when you were employed to work this case did the complainants explain to you how they considered

they were damaged in any way or injured by the present basis of rates?

Mr. Ward: You mean just how did instructions come to me to work this data up?

Mr. Wright: I just want to find out what the fact is as to whether they stated to you definitely how they considered they were injured by the present basis of rates.

Mr. Ward: Their request came secondhand to me, of course, through other parties. I did not confer with the shippers direct at that time. I understood that they had a complaint based on the fact that the rates into Paducah were in a great many instances higher than Cairo, and out of Paducah also higher than Cairo, and that they wanted me to go over the situation and see how the rates were, and just how far Paducah was discriminated against by Cairo.

Mr. Wright: They left it to you to show whether or not they were injured by the present basis of rates?

Mr. Ward: They stated the facts in that way. I cannot say that they depended entirely on me to tell them what their trouble was. They knew probably.

Mr. Wright: Did they state definitely just what their trouble was?

Mr. Ward: Just as near as that comes to it, they did.

Mr. Wright: And they asked you to formulate figures to show they were injured along that line?

Mr. Ward: They did not ask me to formulate figures to show that, but to look into conditions and see if that was the fact.

Mr. Wright: I think that is all.

Mr. Norman: A representative of your company, the Louisville Traffic Bureau, came here at the request of the Paducah Board of Trade prior to the time the complaint was filed, or it was determined that it should be filed, and here found the situation you have shown in your testimony, is that the case?

Mr. Ward: That is the fact of the case, yes.

Mr. Norman: Mr. Ward, you have testified that from I. C. stations and stations on what might be called feeders to the I. C. system, that the rates on hardwood lumber are in no instance, except possibly the instance of this one point here, more than two cents in excess of the rates to Cairo. Is that true on staves or heading, or, rather, is it not true that on staves and heading there is in some instances a difference greater than two cents? We will take Bogalusa, Louisiana. That rate, I believe, you said is 18 cents on staves and heading.

Mr. Ward: No.

Mr. Norman: Houston.

Mr. Ward: Houston, Mississippi, that we were figuring. In that case the rate on staves is 17 cents, staves and heading, and on lumber 14 cents from Houston to Paducah. The classified rate would make the rate on staves and heading, if a commodity rate did not exist, 14 cents.

Mr. Norman: Now, this point Des Arc, Arkansas, is on a branch or feeder of the Rock Island, is it not?

Mr. Ward: Yes, sir.

Mr. Norman: How does traffic from that point move?

Mr. Ward: Via the Rock Island road to Memphis and their connection east to Cairo.

Mr. Norman: Could it come up the west side of the river?

Mr. Ward: I do not find any rate published by the west side lines from Des Arc to Cairo.

Mr. Norman: Do you know of any reason why rates from that point should not be published to Paducah, through rates, instead of being compelled to make a combination on Cairo?

Mr. Ward: I do not.

Mr. Norman: It would not be the natural route for the traffic to move, Cairo first and then to Paducah, would it?

Mr. Ward: It would not.

Mr. Callaway: There is no prayer here for the establishment of any new routes.

Mr. Norman: There is a prayer for the establishment of just rates.

Mr. Callaway: No prayer for the establishment of any new routes, or any attack on rates except by existing routes.

Mr. Norman: I believe that is all.

401 Mr. Callaway: That is all.

(Witness excused.)

O. P. LEIGH was called as a witness and having been duly sworn, testified as follows:

Direct examination:

Mr. Hines: Mr. Leigh, where do you reside and what is your occupation?

Mr. Leigh: Paducah, merchandise broker, manager of the Leigh Banana Case Company.

Mr. Hines: At what point?

Mr. Leigh: Paducah.

Mr. Hines: Has the Leigh Banana Case Company a plant at any other place than Paducah?

Mr. Leigh: Several places, Cairo for one.

Mr. Hines: How long has its plant existed at Cairo?

Mr. Leigh: About three months.

Mr. Hines: Why was there a separate plant established at Cairo?

Mr. Leigh: The discrepancy in freight rates, that is, Paducah had a higher freight rate from the mill than Cairo.

Mr. Hines: From what point?

Mr. Leigh: Des Arc, Arkansas.

402 Mr. Hines: Is that the point from which you obtain your supplies?

Mr. Leigh: Yes, sir.

Mr. Hines: Are you now operating your plant in Paducah?

Mr. Leigh: Yes, it is still operating. It is practically shut down.

Mr. Hines: Is the plant at Cairo in operation?

Mr. Leigh: Yes.

Mr. Hines: When was the Paducah plant established?

Mr. Leigh: About six years.

Mr. Hines: Do you know what rates you have been paying inbound to Paducah on your supplies?

Mr. Leigh: Nineteen cents.

Mr. Hines: What do you use, what kind of lumber?

Mr. Leigh: Staves, hoops and heading.

Mr. Hines: From what point have you been paying 19 cents?

Mr. Leigh: Des Arc, Arkansas.

Mr. Hines: What rate do you pay to Cairo from Des Arc?

Mr. Leigh: 11 cents.

Mr. Hines: Do you know how that traffic moves?

Mr. Leigh: The Rock Island and N. C. & St. L.

Mr. Hines: Is that via Memphis?

403 Mr. Leigh: Via Memphis.

Mr. Hines: Gentlemen, you may take the witness.

Cross-examination:

Mr. Callaway: Mr. Leigh, had you moved your factory to Little Rock, Arkansas, you would have gotten still lower rates than you have gotten to Cairo, wouldn't you?

Mr. Leigh: I am not positive of that.

Mr. Callaway: Des Arc is only about sixty or seventy miles from Little Rock.

Mr. Leigh: Possibly fifty miles.

Mr. Callaway: Or if you had moved to Des Arc, you would have had your material right there?

Mr. Leigh: Sure.

Mr. Callaway: If you had moved to Memphis you would have a still lower rate than you get to Cairo?

Mr. Leigh: Sure.

Mr. Callaway: You move this material through Memphis, you say, on the Nashville, Chattanooga & St. Louis Railway to Paducah?

Mr. Leigh: Yes, sir.

Mr. Callaway: Do you happen to know, that is, are you aware of the fact—and I ask you to assume that it is a fact—that the
404 Nashville, Chattanooga & St. Louis Railway operating to Paducah over its own rails and not to Cairo, carries the same rate from Memphis to Paducah that the other lines carry from Memphis to Cairo?

Mr. Leigh: I did not understand the question.

Mr. Callaway: Are you aware of the fact that the Nashville, Chattanooga & St. Louis Railway operating to Paducah and not to Cairo carries the same rates on forest products, lumber and so forth, from Memphis to Paducah as any other line will carry from Memphis to Cairo?

Mr. Leigh: I do not know that.

Mr. Callaway: You do not know about that?

Mr. Leigh: No, I do not.

Mr. Callaway: That is all.

Mr. Wright: Mr. Leigh, what rate did you say you pay from Des Arc to Paducah?

Mr. Leigh: 19 cents.

Mr. Wright: And that is a movement via Memphis on the Nashville, Chattanooga & St. Louis?

Mr. Leigh: Yes, sir.

Mr. Wright: You could get your material in here on a 17 cent rate if you moved it via Cairo and the Illinois Central?

405 Mr. Leigh: Yes.

Mr. Wright: You choose to pay a two cent higher rate and move the stuff via that route.

Mr. Leigh: That is handled by Chicago. They route it. I don't know why they do it. I haven't asked them any questions.

Mr. Wright: At what other points do you have factories located?

Mr. Leigh: We have a factory at Chicago, one at Minneapolis, Paducah and Cairo.

Mr. Wright: You have just four factories?

Mr. Leigh: Yes, that is, that we call factories. Of course they are located all over the country, in every part of the country, small factories where people buy their knocked down material, and we send men——

Mr. Wright: Let me understand you. You ship raw material into certain points and it goes through some process of manufacture to make it into these crates or boxes, whatever you may call them?

Mr. Leigh: Yes, sir.

Mr. Wright: And you only have four points at which you do that?

406 Mr. Leigh: No.

Mr. Wright: That is what I want to find out, at what points do you manufacture?

Mr. Leigh: We ship all over the United States and into Canada.

Mr. Wright: At what points do you manufacture?

Mr. Leigh: There are only three factories that we use, that is, to make up crates to be sold and shipped from the factory, but all over the United States they have factories and sell and purchase earloads of knocked down material, and send a man to that point and have it made up. Of course that would be a one cylinder factory.

Mr. Wright: And they are owned and operated by your company?

Mr. Leigh: By the Leigh Banana Case Company, Chicago, yes.

Mr. Wright: And I assume then that on your out shipments you ship them from the point which makes the lowest rate?

Mr. Leigh: Well, you are speaking of knocked down stuff now. We have the factories at Paducah, Cairo, Chicago and Minneapolis that manufacture to go to the trade made up. We ship from here to Illinois points or to Ohio points and the south, Alabama, Georgia, Louisiana.

407 Mr. Wright: Suppose a man, say for instance in South Carolina, wants a stock of crates, where are they shipped from?

Mr. Leigh: If he wants made up crates, they would be shipped from Paducah or Cairo.

Mr. Wright: Depending on whether he wants them knocked down or made up?

Mr. Leigh: The knocked down go from Des Arc, Arkansas.

Mr. Wright: The point at which you obtain your raw material?

Mr. Leigh: Yes, sir.

Mr. Callaway: Have you a factory at that point?

Mr. Leigh: We have a mill that cuts the logs. That is, the White River Lumber Company does that part of our work.

Mr. Wright: What percentage of your shipments are in a knocked down condition?

Mr. Leigh: About 75 per cent.

Mr. Wright: And what of the remaining 25 per cent of your business—what percentage is done at Paducah?

Mr. Leigh: What per cent is done in Paducah?

Mr. Wright: Yes, sir.

Mr. Leigh: There is very little of it now.

Mr. Wright: What percentage is done at Cairo?

408 Mr. Leigh: The Paducah factory originally did 75 per cent of the made up material, made up crates.

Mr. Wright: What do you mean by originally?

Mr. Leigh: Before the factory was sent to Cairo, that is, before they established a factory at Cairo. Cairo and Paducah manufacture 75 per cent of the make up crates.

Mr. Wright: I think that is all.

Mr. Hines: Mr. Leigh, you have been asked if you would have gotten an even better rate on your material by locating your plant at Little Rock instead of Cairo. Would you or not have been at a disadvantage so far as the shipments out of your product were concerned?

Mr. Leigh: We could not have gotten out at all on the made up product.

Mr. Hines: To what points do you ship your product?

Mr. Leigh: Cincinnati, Cleveland, Ohio, Columbus, Ohio.

Mr. Hines: You ship north?

Mr. Leigh: Yes, sir, and Knoxville, Tennessee, and Mobile, Alabama, and points in the south.

Mr. Hines: That is all, I believe.

(Witness excused.)

409 W. F. PAXTON was called as a witness and having been duly sworn, testified as follows:

Direct examination:

Mr. Hines: Mr. Paxton, where do you reside and what business are you engaged in?

Mr. Paxton: I reside in Paducah, president of the Paducah Co-op-
erage Company.

Mr. Hines: What is the nature of the business of your company?

Mr. Paxton: We manufacture barrels, shooks and heading.

Mr. Hines: What kind of lumber do you use?

Mr. Paxton: We use oak staves and heading, and we do not use any other sort of lumber.

Mr. Hines: From what points do you draw your material?

Mr. Paxton: Principally from Mississippi, some from Tennessee.

Mr. Hines: Can you name one or two points in Mississippi from which you draw your material?

Mr. Paxton: From Charleston, Mississippi, Gershorm, Mississippi, Houston, Mississippi.

Mr. Hines: Take for illustration Gershorm, Mississippi, what is the rate you pay from Gershorm, Mississippi, to Paducah?

410 Mr. Paxton: 16 cents per one hundred pounds.

Mr. Hines: What is the rate to Cairo?

Mr. Paxton: 12½.

Mr. Hines: Is that a typical point, and are the rates generally from that territory in favor of Cairo as against Paducah?

Mr. Paxton: Yes, sir, that is my understanding.

Mr. Hines: Do you know, Mr. Paxton, what the difference in freight rates between Paducah and Cairo on your material would mean to you in dollars and cents in a year?

Mr. Paxton: Our capacity is from eight to ten million pieces of staves and heading a year. About 20,000 pieces make a car, from fifteen to twenty thousand. The difference of two cents per hundred pounds would be from \$10 to \$13 a car. Two cents a hundred would make that much difference.

Mr. Hines: How many cars do you say you move in a year?

Mr. Paxton: Well, our capacity would run in pounds about—to be conservative I will say 400 cars.

Mr. Hines: And that would be the difference of two cents per hundred pounds. Of course a difference of four cents per hundred pounds would be twice that.

411 Mr. Paxton: Yes.

Mr. Hines: You may take the witness.

Cross-examination:

Mr. Callaway: Mr. Paxton, do you bring in logs and saw them up?

Mr. Paxton: We have tried to, but the rates are so exorbitant we cannot bring them in here.

Mr. Callaway: Take the Illinois Central Railroad Company, did not the Paducah Cooperage Company in 1910 bring a complaint involving the rates from points on the Nashville, Chattanooga & St. Louis and say that the rates from points on the Illinois Central were all very low and reasonable and that the Nashville, Chattanooga & St. Louis ought to apply the same rates?

Mr. Paxton: I don't know. I was not connected with the company at that time.

Mr. Callaway: You did not know that the Commission refused to do it?

Mr. Paxton: No, sir, I did not.

Mr. Callaway: Isn't it a fact that you have a drawback arrangement on logs and rough material that you get from points on the

Illinois Central, by which you get rates beginning at three
412 cents per one hundred pounds—or beginning at a cent and a
quarter for fifteen miles, and actually in 200 miles get a
rate of six cents per one hundred pounds?

Mr. Paxton: I understand that is the tariff rate, but there is no
lumber used within that territory as it exists today. We have been
endeavoring to secure rates on logs from Mississippi to bring them
in here, and the best way by combination or otherwise that we can
figure that out is $10\frac{3}{4}$ cents per one hundred pounds, and from the
same territory to Memphis it is $5\frac{3}{4}$.

Mr. Callaway: I will call your attention to the rate 455 miles and
over 425 miles, which is further than to any point you mention.

Mr. Paxton: It is 280 miles to Charleston, and that is on the Y.
& M. V. road. It has got to go from here to Grenada before it
strikes the Illinois Central.

Mr. Callaway: You want two lines to give you those rates instead
of one?

Mr. Paxton: Yes, sir.

Mr. Callaway: But at points on the Illinois Central as far as 455
miles and more I note the rate on both bolts, poles and logs, the
material you use in manufacturing staves, is $8\frac{3}{4}$ cents
413 as far down as 455 miles, which would carry you away down
clean to New Orleans.

Mr. Paxton: We do not bring the logs here for the purpose of
making staves.

Mr. Callaway: You bring the stave bolts here for that purpose?

Mr. Paxton: No, we do not bring any bolts here.

Mr. Callaway: Why don't you?

Mr. Paxton: We bring nothing but the stave itself, the finished
stave. It is much cheaper to make them up in the woods and have
them ready for use when they get here.

Mr. Callaway: You mentioned Charleston, Mississippi. That is
the only point in that territory that you mentioned that was on the
Illinois Central or Y. & M. V. Is there any difference in the rates
from Charleston as between Paducah and Cairo?

Mr. Paxton: I don't know.

Mr. Callaway: They are the same, aren't they?

Mr. Paxton: I don't know.

Mr. Callaway: You don't say that Cairo has the advantage?

Mr. Paxton: I don't say that there is any difference be-
414 tween Charleston and Cairo, but Gershorm and Houston are
the points where we buy most of the staves we buy. At
Charleston we are running a mill and producing this material.

Mr. Callaway: How do you know there is a $12\frac{1}{2}$ cent rate from
Gershorm to Cairo proper?

Mr. Paxton: Only from general information. I never shipped
any there.

Mr. Callaway: You have heard it this morning?

Mr. Paxton: No, I have known it for a year at least. I have been
hearing it for a year.

Mr. Callaway: The Paducah Lumber Company are located at Paducah?

Mr. Paxton: The Paducah Cooperage Company.

Mr. Callaway: The Paducah Cooperage Company, and at that time Mr. Holland and Mr. Blow, I believe——

Mr. Paxton: Up to the last of October a year ago Mr. Blow was manager and owner of it.

Mr. Callaway: He had large tracts of land down in this Tennessee territory?

Mr. Paxton: No, he did not have any.

Mr. Callaway: He is mistaken in his testimony?

Mr. Paxton: He might have had two or three years ago. I mean to say in October, 1911, he did not have any such land at all.

Mr. Callaway: That is all.

Mr. Hines: That is all.

(Witness excused.)

C. H. SHERRILL was called as a witness and having been duly sworn, testified as follows:

Direct examination:

Mr. Hines: Mr. Sherrill, what is your residence and occupation?

Mr. Sherrill: Paducah, Kentucky; lumber business.

Mr. Hines: What is the nature of your lumber business?

Mr. Sherrill: We manufacture lumber and buy and sell.

Mr. Hines: From what points do you draw your lumber?

Mr. Sherrill: We draw our yellow pine largely from Mississippi and Louisiana.

Mr. Hines: What kind of lumber do you use principally?

Mr. Sherrill: I am connected with two companies here in Paducah. The Sherrill-Russell Lumber Company handle largely yellow pine, and the Sherrill-King Mill & Lumber Company handle exclusively hardwood. They manufacture more or less other stock and buy very little on the outside.

Mr. Hines: What is the difference between the business of those two companies?

Mr. Sherrill: One does a strictly wholesale business in hardwood; the other does a wholesale business and retail business in both hardwoods and soft woods, house building material.

Mr. Hines: Do you know in a general way the difference between the rates to Cairo and the rates to Paducah on lumber from the territory from which you draw your supplies?

Mr. Sherrill: Yes, sir, I do.

Mr. Hines: What is that difference in general?

Mr. Sherrill: On yellow pine the rate to Paducah is from the east side, from the territory we recognize as the long leaf yellow pine belt, 14 cents, to Paducah it is 16 cents. From the west side territory that we are particularly familiar with, and where we are interested in Alexandria, Louisiana, the rate on yellow pine to Pa-

ducah is 18 cents, to Cairo it is 14 cents. The same rate applies from that same territory on what we term hard wood, such as oak, gum, and so forth.

Mr. Hines: Do you operate a saw mill at Paducah, Mr. Sherrill?

Mr. Sherrill: Yes.

417 Mr. Hines: Would you operate that saw mill if that were your only business, or do you simply operate it in conjunction with your other business—as an incident to your other business?

Mr. Sherrill: Well, if I were operating a saw mill exclusively I don't know that I would operate it at Paducah. Were it not for the fact that it aids materially in furthering the interest of the Sherrill-Russell Lumber Company, I don't think I would operate a saw mill at Paducah.

Mr. Hines: To what territory generally do you ship lumber?

Mr. Sherrill: The Sherrill-King Mill & Lumber Company ship hard wood into Chicago and Cleveland, Detroit and Pennsylvania territory.

Mr. Hines: If you sell lumber in C. F. A., Western Trunk Line or Eastern Trunk Line territory at the same price that the Cairo dealer sells the same kind of lumber, how does your profit compare with those of the Cairo dealer?

Mr. Callaway: Understand our objection goes to that testimony, your honor.

Examiner Esch: Yes, that is understood.

Mr. Hines: You may answer the question.

418 Mr. Sherrill: Approximately about 90 cents per thousand feet in favor of the shipper at Cairo.

Mr. Hines: Can you state what per cent of your profit that would be?

Mr. Sherrill: Approximately about 25 per cent.

Mr. Hines: You were simply speaking of the difference in the outbound rates. You are not referring to the difference on the inbound rate at all?

Mr. Sherrill: The outbound shipments only that I have reference to.

Mr. Humburg: May I suggest, your Honor, that we limit the investigation in this case to the issues in this case? The outbound rates are involved in another case, and we shall there consider the outbound rates. If we do not do that there will be confusion in the record and there will be confusion in the briefs. We have thus far abstained from any cross-examination with respect to outbound rates, relying upon the statement made when we started out this morning that we will consider in this case only the issues in this case and in the other case the issues in the other case.

Mr. Hines: What difference in your profit would the difference in favor of Cairo on the inbound shipments of lumber
419 make?

Mr. Sherrill: An average of about fifty cents per thousand feet.

Mr. Hines: Can you state in a general way what per cent of your profits it would be?

Mr. Sherrill: I cannot.

Mr. Wright: Is that on lumber consumed locally in Cairo?

Mr. Sherrill: I beg your pardon?

Mr. Wright: Are you basing that on lumber that is consumed locally?

Mr. Sherrill: Yes.

Mr. Hines: He stated that that was the difference it made in the inbound rates. It does not make any difference whether it is consumed or not.

What proportion of the lumber shipped into Paducah is consumed in Paducah, if you know approximately?

Mr. Sherrill: I could not answer that question intelligently.

Mr. Hines: What is the average loading of lumber per car, yellow pine lumber, say?

Mr. Sherrill: Different conditions warrant different capacities. Under present conditions cars are being loaded to their extreme limit. On the average yellow pine I would think the capacity per car would be something between 50,000 and 60,000 pounds per car.

Mr. Hines: Does the loading of hard wood lumber materially differ from that of the average?

Mr. Sherrill: No.

Mr. Hines: Gentlemen, you may take the witness.

Cross-examination:

Mr. Callaway: Mr. Sherrill, from what points do you obtain the logs that you saw in your mill?

Mr. Sherrill: What points?

Mr. Callaway: Yes, where do you get your raw material, your logs?

Mr. Sherrill: Quite a number of points. We get a good portion of our timber from the rivers.

Mr. Callaway: Explain that and state where and from what rivers, whereabouts you get it?

Mr. Sherrill: Largely on the Tennessee rivers in a radius of 160 miles.

Mr. Callaway: You also bring some from up the Ohio to Paducah, do you not?

Mr. Sherrill: Yes, sir.

421 Mr. Callaway: Where do you get those logs?

Mr. Sherrill: I have not been further south in drawing that supply than Wickliffe, Kentucky, thus far.

Mr. Callaway: How far is that from here?

Mr. Sherrill: I am not acquainted with the river mileage very much, but Wickliffe, I guess, is about sixty miles.

Mr. Callaway: With respect to Cairo then where would Wickliffe be? I am not familiar with it myself.

Mr. Sherrill: Approximately I would say that by river from Paducah to Cairo would be between forty and fifty miles, and Wickliffe is about five miles below Cairo.

Mr. Callaway: On the other side of Cairo?

Mr. Sherrill: Yes, sir.

Mr. Callaway: You bring material from the Tennessee river down the Tennessee river to Paducah?

Mr. Sherrill: Oh, yes.

Mr. Callaway: And from the Cumberland?

Mr. Sherrill: Some from the Cumberland. Our stave logs by river come largely out of the Tennessee river.

Mr. Callaway: I take it, however, that that is hard wood. You don't bring pine from down those rivers, do you?

Mr. Sherrill: Technically speaking there is nothing that
422 comes into this territory except hard wood, and my usual understanding of that term would cover oak as hard wood and gum, poplar and cottonwood as soft woods.

Mr. Callaway: How is pine classified?

Mr. Sherrill: Pine is hard wood:

Mr. Callaway: It is not your custom, or at any rate, it is not done — to bring pine logs down these rivers or up the river to Paducah?

Mr. Sherrill: Yes, more or less yellow pine logs are brought into Paducah. I buy more or less of them.

Mr. Callaway: Where from?

Mr. Sherrill: I know that my competitors buy more or less of it. This pine originates near Bear Creek, a point on the Tennessee River.

Mr. Callaway: That is local, however. What I mean to say is that that supply of pine timber that is shipped down, that is brought down the river to Paducah or any of these saw mills from the territory around Tennessee and Kentucky, is small compared to the hard wood lumber?

Mr. Sherrill: The amount is practically nothing.

Mr. Callaway: That is your real pine — what we call the
423 pine belt of Mississippi, and the far south, they have supplies of pine?

Mr. Sherrill: It is where the supply of yellow pine is, and that moves by rail.

Mr. Callaway: That is all.

Mr. Wright: I have no questions.

Mr. Hines: That is all.

(Witness excused.)

Mr. Hines: That is our case.

(Whereupon, at 12:25 o'clock P. M. a recess was taken until 1:45 o'clock P. M.)

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After Recess.

Mr. Hines: Mr. Examiner, I want to ask Mr. Craig just one question.

C. W. CRAIG, was recalled for further examination, and having been previously sworn, testified as follows:

Mr. Hines: Mr. Craig, there has been some intimation or insinuation in the interrogation of witnesses that the shippers of Paducah did not know that they were injured until they were told by the Louisville Traffic Bureau, which was employed to get up data in

this case, or by counsel in this case, that they were injured. Please state the origin of this complaint and the history of the negotiations leading up to its filing.

Mr. Callaway: People have a right to bring any complaint they want to.

Mr. Wright: I think I asked the question. It was not asked in that manner at all.

Mr. Craig: There has been a general unrest here with the people for a number of years, and with the formation of the Board of Trade it was the purpose of that organization to investigate the rates, and see if there was discrimination against this city in favor of

425 Cairo; if so, to take the matter up and have it corrected.

After I was elected secretary, we investigated it very carefully and found out that that did exist. We took the matter up with the Illinois Central road and we had different conferences here in Paducah with the traffic officials of the different lines, and finally they made us a proposition that we did not accept. it was not satisfactory, to adjust certain rates from the south provided we would withdraw our other complaints. After we turned that down, which I think was in last April, then we took the matter up with Hines & Norman of Louisville and the Louisville Traffic Bureau and employed them in the case; but the origin of this case dates clear back beyond the time that we retained Hines & Norman as our attorneys.

Mr. Callaway: Now you have restored your character in the record.

Mr. Hines: We do not wish to ask the witness anything further.

Mr. Callaway: Nothing further.

Mr. Wright: I simply want to make a statement. I asked the question referred to, and the reason I asked it was that the witness on the stand, Mr. Smith, very carefully avoided or would not

426 answer any questions as to how he was injured, and I wanted to see if he was able to tell the defendants attorneys as to how he was injured, if he had been so.

(Witness excused.)

E. K. BRYAN, Jr., was called as a witness, and having been duly sworn, testified as follows:

Direct examination:

Mr. Callaway: Mr. Bryan, you are assistant general freight agent of the Illinois Central Railroad Company, Southern Lines?

Mr. Bryan: Yes, sir, and of the Yazoo & Mississippi Valley Railroad, with headquarters at Memphis.

Mr. Callaway: You have been in this territory and in the employ of those lines for quite a number of years now and are familiar, are you not, with the rate adjustments from the territory included in this complaint?

Mr. Bryan: Yes, sir.

Mr. Callaway: File a map showing the lumber sections of the Illinois Central and the Yazoo & Mississippi Valley railroads, and point out the rate adjustments to Cairo and Paducah.

Mr. Bryan: I file as my Exhibit No. 1 a map showing the
 427 lines of the Illinois Central Railroad south of St. Louis and
 the Ohio river, and of the Yazoo & Mississippi Valley Rail-
 road, and also a number of other connecting and competing roads
 both east and west of the Mississippi River.

(The map, so offered and identified, was received in evidence and
 thereupon marked "Bryan Exhibit No. 1, received in evidence Sep-
 tember 17, 1913," and is attached hereto.)

Mr. Callaway: Take that map and point out to the Examiner there
 the location of Cairo and Paducah, and give us a general idea of
 the lines that serve those two cities.

Mr. Bryan: Cairo is located at the confluence of the Mississippi
 and Ohio rivers, 169 miles north of Memphis.

Paducah is located on the south bank of the Ohio river, 166 miles
 north of Memphis, and about 45 miles east of Cairo. The black
 heavy lines indicated on this map are lines of the Illinois Cen-
 tral Railroad. The lines indicated by red are the Yazoo & Mississippi
 Valley Railroad. The lines shown in smaller black lines or roads
 shown in smaller black lines are connecting and competing lines,
 both east and west of the Mississippi river.

The pine district on our line is practically all south of the
 428 Alabama & Vicksburg Railroad which runs from Vicksburg
 to Meridian.

Mr. Callaway: Through Jackson?

Mr. Bryan: Through Jackson, Mississippi. There is some little
 pine on the Aberdeen branch which runs from Aberdeen, Mississippi,
 to Aberdeen Junction. There is practically no pine anywhere north
 of the A. & V. railway except on this little branch that runs from
 Aberdeen to Aberdeen Junction, and some on this branch which runs
 from Jackson, Tennessee, to Birmingham, Alabama. That whole
 line you will notice is shown in heavy black, indicating that it is
 the line of the Illinois Central Railroad, and that it is true that we
 operate our own service from and to Birmingham over that line;
 but the portion of the line from Jackson, Tennessee, to Corinth, Mis-
 sissippi, is the main line of the Mobile & Ohio Railroad, over which
 we have trackage rights.

The line from Haleyville, Alabama, to Jasper, Alabama, is the
 Northern Alabama Railroad, a dependency of the Southern Railway.
 The line from Jasper, Alabama, to Birmingham, Alabama, is the
 St. Louis & San Francisco Railroad. This 80 miles between Corinth
 and Haleyville is our line.

Mr. Callaway: You mean the Illinois Central built it in
 there?

429 Mr. Bryan: The Illinois Central built it in there and owns
 it.

Mr. Callaway: And that is the only section of the line from Jack-
 son down to Birmingham between Corinth and Haleyville as you
 have stated that the Illinois Central makes and controls rates?

Mr. Bryan: That is true.

Mr. Callaway: West of the Mississippi river you have shown a
 number of lines. That is to indicate, is it not, lines competing from

lumber sections west of the river up to Cairo with the lines east from the lumber section east of the Mississippi river to Cairo?

Mr. Bryan: That is true, and you may note that the Cotton Belt and Rock Island have—not the Rock Island, the Cotton Belt and the Iron Mountain have their own lines into Memphis, and the Frisco, while it does not run into Cairo, runs into Thebes, which is their river crossing immediately north of Cairo.

Mr. Callaway: They carry Cairo rates the same as the other lines?

Mr. Bryan: They carry to Thebes or beyond, the same as we carry to Cairo, there being nothing at Thebes to make necessary
430 any rates at all at that point.

The Rock Island road is shown here from Memphis only as far west as Little Rock. Of course it runs much further west, but we have only shown it here as far as Little Rock, because that is the territory immediately competitive with our cross country stations east of the Mississippi river.

Mr. Callaway: And the territory from Memphis to Little Rock south of there is the territory set out in the complaint?

Mr. Bryan: That is true.

Mr. Callaway: Explain to the Commission the meaning of these various figures and letters shown on the map.

Mr. Bryan: You will notice that preceding each line of figures is the letter "C" or "P." "C" means Cairo and "P" Paducah, and the letters immediately following those—the figures immediately following those letters are the distances from that particular point of origin to Cairo and Paducah. Wherever the letter "P" appears in connection with the rate, it means pine. Wherever "C" and "G" appears, it is cottonwood and gum. "O K." means other kinds; "AK" means all kinds; "P" and "C" means pine and cypress. I believe there is no place on the map where the letter "C" appears alone in connection
431 with the rate. That map will give you the rates on all kinds of lumber from representative stations both east and west of the river, and the mileages therefrom to both Cairo and Paducah, and the rates on all kinds of lumber.

Mr. Callaway: You might explain that adjustment. I understand the rate adjustment north of Memphis is not really under attack, but just give a little brief statement of the entire situation.

Mr. Bryan: Taking the line from Paducah down as far south as Memphis or rather we might say Fulton, the rates north of Fulton and of course the rates into Paducah and Cairo are influenced by the local scale; but when you get to Fulton, which is about 45 miles south of the Ohio river, we then begin to get into the adjustment which we are now explaining. From points on this branch running from Fulton to Memphis, including Memphis, the rates on all kinds of lumber are the same to Cairo and Paducah.

Mr. Callaway: But what lumber is in that section is hardwood?

Mr. Bryan: Yes, sir. I just explained that there is no pine lumber of any consequence north of this line here.

Mr. Callaway: Which line?

Mr. Bryan: North of the Alabama & Vicksburg Railway.
432 The rates on cottonwood and gum, oak, ash, hickory and other hardwoods from lines leading south from Fulton to and

including Memphis are the same to Cairo and Paducah, and they are also the same on all kinds of lumber.

Coming down the main line of the Illinois Central Railroad south of Fulton through Jackson, Holly Springs, the Grenada and Aberdeen division, the rates on all kinds of lumber as far south as Jackson, Mississippi, are the same to Paducah as to Cairo, but there is no pine in that territory.

Mr. Callaway: All hardwood territory you are talking about?

Mr. Bryan: All hardwood territory I am now describing.

Mr. Callaway: The hardwood in the territory you have just described, I think, is substantially the same kind of hardwood as testified to by the witnesses this morning?

Mr. Bryan: The same character of wood. Coming down the Yazoo & Mississippi Valley Railroad from Memphis south we find the same general situation as respects hardwood lumber as obtains over on the Illinois Central Railroad at opposite points; in other words, the rates on lumber from Y. & M. V. stations north of the Alabama & Vicksburg Railway are, generally speaking, the same to
433 Paducah as to Cairo, but there is no pine in that territory.

Mr. Callaway: And the Y. & M. V. is the rate-controlling road, in that it serves the real producing territory?

Mr. Bryan: The hardwood territory. The Illinois Central Railroad, as has been recognized by the Commission, serves principally a pine territory. All of this territory north of Jackson on the Illinois Central Railroad is very largely cut out. There is very little of any kind of lumber up there now. The principal lumber remaining on the Illinois Central being south of Jackson, Mississippi, and that is pine. The Commission in the Memphis Freight Bureau case, Docket 4942, I think, said that the Illinois Central railroad serves principally a pine territory, while the Yazoo & Mississippi Valley Railroad serves principally a hardwood territory. I believe I just stated that from stations on the Y. & M. V. north of Vicksburg and Jackson, the rates on lumber, hardwood, are the same to Paducah as to Cairo.

Mr. Callaway: It is south of Jackson, is it not, that your connections furnish the bulk of your pine lumber, such as the Gulf & Ship Island, the Mississippi Central and these other lines we have been
speaking of this morning come in?

434 Mr. Bryan: They all come in south of Jackson except the N. O. M. & C., which connects with us at Ackerman, Mississippi, a station on the line between Aberdeen Junction and Aberdeen.

Mr. Callaway: But that line serves does it not on its way down to Mobile, cross lines into Hattiesburg and so forth, the same pine section that the Illinois Central serves south of Jackson?

Mr. Bryan: Identically. Their rates from opposite stations in the pine district are the same as from stations on our line, the same as from opposite stations on the Gulf & Ship Island, New Orleans & Northeastern, Mississippi Central and New Orleans Great Northern.

Mr. Callaway: It has a somewhat ragged adjustment, in that these rates from opposite stations to a section in that territory are neces-

sarily made in accordance with the rates made on Trunk Lines such as the Mobile & Ohio and Illinois Central?

Mr. Bryan: Yes, sir, but this ragged adjustment does not start until you get north of the A. & V. Railway. South of the A. & V. road they carry the same rates to the Ohio river as we carry and as are carried from opposite stations on the New Orleans & 435 Northeastern, and all other lines in the pine belt. In other words, the rates so far as the trunk lines are concerned are the same and on some of the tap lines are higher than the trunk line adjustment.

Mr. Callaway: You can explain how the rates vary, point that out.

Mr. Bryan: From stations on the Fulton district, which is the line from Fulton to Memphis, including Memphis, the rate on lumber which moves from that particular territory, which is hardwood, is 10 cents to Paducah and Cairo, except from a few stations immediately south of Fulton, where the rates are 8 cents to both points. From stations on the Cairo district, which is the line running south from Fulton through Jackson, Tennessee, the rates as far south as Jackson, Tennessee, are 10 cents both to Paducah and Cairo on all kinds of lumber which moves from that territory, except from a few stations immediately south of Fulton, from which the rate is 8 cents.

From stations on the Jackson district, which is the line running south of Jackson through Holly Springs, the rate on cottonwood and gum lumber from a few stations immediately north of Jackson are 10 cents to both Cairo and Paducah, and 12 cents on other 436 kinds of hardwood. The 12 cent rate runs down as far as Hudsonville, which is just below Grand Junction, to the line of the Southern Railway running east from Memphis. There the rates on cottonwood and gum fall to 10 cents, because of cross country competition with the Mobile & Ohio and our own Grenada district. They go down to 10 cents until we get to Grenada, Mississippi, on cottonwood and gum. Then they come up to 13 cents as far south as Durant, and from points south of Durant into New Orleans they are 14 cents.

From stations on the Grenada district, which is the line running from Memphis to Grenada, the rates are the same to Paducah as to Cairo, being 10 cents on cotton to Cairo and 13 cents on other kinds of hardwood.

From stations on the Aberdeen district, the rates on lumber except pine are 13 cents both to Paducah and Cairo. Here is where we strike the first pine territory, and the rates on pine from that district to Paducah are two cents higher than to Cairo, while the rates on hardwood are the same.

South of Jackson, Mississippi, where we strike the pine territory, the rates from our lines and also from the larger connecting 437 lines such as the Gulf & Ship Island, New Orleans Great Northern and Mississippi Central are to Cairo 14 and to Paducah 16 cents per 100 pounds on all kinds of lumber, but there is nothing produced in that territory to amount to anything except pine. There is practically no hardwood in there. You will note, therefore, that where we have an appreciable movement of pine, the

rates on pine to Paducah are generally speaking, I think, without exception perhaps two cents higher to Paducah than Cairo, while on the hardwood from the hardwood territory are the same to Paducah as to Cairo.

Mr. Callaway: What little pine might be produced, say, in a hardwood territory, takes the hardwood adjustment or rate?

Mr. Bryan: No, we have some specific rates.

Mr. Callaway: You need not go into that, but generally speaking that may be true?

Mr. Bryan: Generally speaking it may be true.

Mr. Callaway: And generally speaking, south of Jackson in our pine territory what little gum or cottonwood or hardwood is interspersed in that pine territory takes the pine adjustment?

438 Mr. Bryan: That is correct. Which is two cents higher to Paducah than to Cairo, but there is practically no hardwood produced on the Illinois Central Railroad south of Jackson.

As to the Y. & M. V. Railroad, what I have said with respect to the Illinois Central Railroad is practically true of cross country stations on the Y. & M. V. road. From stations as far south as Vicksburg and Jackson on the Y. & M. V. road, the rates are the same on hardwood—and that is hardwood territory—the rates are the same to Paducah as to Cairo, and the rate of 10 cents on cottonwood and gum and 13 cents on other kinds of hardwood runs clear down the Y. & M. V. road to the first station north of Vicksburg and Jackson.

Mr. Callaway: That is practically from Memphis down to Vicksburg and Jackson?

Mr. Bryan: Yes, sir. When you get south of Vicksburg and Jackson we have the same adjustment exactly as we have from cross country stations on the Illinois Central Railroad, 14 cents to Cairo and 16 cents to Paducah.

Mr. Callaway: You have got out of your hardwood territory when you get south of Vicksburg even on the Y. & M. V., except perhaps at Baton Rouge and some of your river points?

439 Mr. Bryan: Yes, and that movement is—it is not what we ordinarily speak of as hardwood, it is cottonwood and gum or cypress.

Mr. Callaway: Now explain the reason why hardwood takes substantially the same rate in the hardwood territory to Cairo as to Paducah, and why pine from pine territory and what little hardwood is in that territory takes a two cent higher rate to Paducah than to Cairo.

Mr. Bryan: In their opinion No. 2375, Memphis Freight Bureau vs. Illinois Central Railroad Company et al., Docket No. 4942, page 510, the Commission said—

Mr. Hines: May I ask what volume that is?

Mr. Bryan: It has not been bound yet, I think, Mr. Hines. I have the opinion there if you would like to see it. The commission says: "The Illinois Central serves principally a pine territory, while the Yazoo & Mississippi Valley serves a hardwood territory."

We are safe in assuming, therefore, that the pine adjustment was fixed by the Illinois Central Railroad and followed as a commercial,

competitive proposition by the Y. & M. V.; while the hardwood adjustment, including the rates on cottonwood and gum, 440 were fixed by the Y. & M. V. and followed as a commercial, competitive proposition by the Illinois Central.

It is generally known and acknowledged that there is practically no water competition on pine lumber. Pine grows in the interior away from the waterways and the rates on pine are not appreciably affected by that character of competition. The rates on pine lumber, however, are affected by commercial competition. I mean by this that the rates on pine are affected, influenced and frequently fixed by rates which may be established by competitive carriers from the competitive points of manufacture, and as a matter of fact, this is exactly what did fix the abnormally low rates on pine to Cairo.

For years the rates on lumber from our pine district in southern Mississippi to Cairo were made to meet the rates on pine from points in southern Arkansas and northern Louisiana west of the Mississippi river, the rate at that time being 14 cents from both territories of production. In April, 1903, uniform advances of two cents per 100 pounds were made in the rates from both territories to Cairo and to other Ohio river crossings. These advances were attacked, condemned by the Commission, and appealed to the courts, with 441 the final result that the western lines were permitted to continue their advances, while we were required to restore the rates formerly in effect. That resulted in restoring the 14 cent rate from pine producing territory east of the river, and making the rates from opposite points west of the river 16 cents.

The map which I have filed as my Exhibit No. 1 shows the pine producing territory in Arkansas and Louisiana west of the Mississippi river, and the lines leading therefrom to Cairo. In numerous opinions the Commission has recognized the forces converging at Cairo which tend to keep the rates to that point on an abnormally low basis. On page 224 of Interstate Commerce Commission's reports, Volume 24, Lumber Exchange of St. Louis versus Anderson & Saline River Railroad Company et al., Docket No. 4336, the Commission said:

"Lumber from many points of the south can reach the great consuming markets in Central Freight Association and Western Trunk Line territory through that gateway (Cairo) and rates to most of this territory are made by combinations upon that gateway. As a result, rates from both the east and from the west to Cairo are lower than 442 to other points for corresponding distances."

While it is true that Paducah is located on the river, and so far as water conditions are concerned may be as favorably situated as is Cairo, there is little if any water competition on pine, and the rail competition at Cairo is very much more severe than at Paducah. As a matter of fact, while we have the most active and potent character of competition at Cairo on pine lumber, we have practically no competition at all on pine lumber at Paducah, because as previously stated, there is no movement via water, and the rates to Paducah from every other pine producing territory are very much higher than from our Mississippi pine territory.

The rates from Georgia pine territory to Paducah now approximate 20 cents as against our 16 cent rate. You will note by reference to the map which I have filed as Exhibit No. 1, that the rate on pine from Camden, Arkansas, to Paducah, is 22 cents; from Monroe, Louisiana, 22 cents; from Shreveport, 22 cents; from Alexandria, 22 cents; from Texarkana, 22 cents; from Little Rock, 20 cents, and from Pine Bluff, 21 cents, and these rates are illustrative of the rates from the Arkansas-Louisiana territory west of the Mississippi River; so while we have the most active kind of competition on pine lumber at Cairo, we have no such competition at Paducah justifying even as low a rate as 16 cents.

The rate on pine lumber from Proctor, Arkansas, to Cairo, is 10 cents;

From Brinkley, Arkansas, 10 cents;

From Des Arc, Arkansas, 11 cents;

From Little Rock, 16 cents;

From Fordyce and Eldorado, 16 cents;

From Ruston and Alexandria, 16 cents.

I do not want to be understood as arguing that the present rate of 14 cents to Cairo is correct. There is no necessity, commercial or otherwise, and no justification so far as I know for a lower rate on pine lumber from our territory to Cairo than from opposite stations west of the Mississippi river, or 16 cents; but even if we should succeed in advancing the rate to Cairo to 16 cents, that would not justify the continuance of the present 16 cent rate to Paducah. The rate to Paducah on pine lumber ought to be higher than to Cairo, not only from points west of the Mississippi river, but also from the producing territory east of the Mississippi river.

Mr. Callaway: Mr. Bryan, let me ask you right there if I understand you correctly. Do you mean to say that insofar as the shipping territory for pine east of the Mississippi river and its rate to Cairo are concerned, that this rate up until the Commission ordered the rates established in 1903 reduced from the Mississippi Valley, and permitted rates opposite the Mississippi Valley to apply on the western side of the Mississippi, and that the rates carried for many years from competitive producing territory were the same?

Mr. Bryan: That is right.

Mr. Callaway: Were made that way for competitive reasons?

Mr. Bryan: That is right.

Mr. Callaway: That situation did not apply, did it, to any other point on the Ohio river from your pine producing territory?

Mr. Bryan: No, sir.

Mr. Callaway: For instance, is it not a fact that the Commission approved in the Norman Lumber Company case rates from the same yellow pine territory to Louisville that were 5 cents higher than from the same producing territory to Cairo, while from other sections of Mississippi near the Mississippi river, taking hardwood rates, perhaps, the differential was only two cents; in other words, wasn't it stated just the same in that case, that when you got away from Cairo, that you got away from the great center of abnormal competition?

Mr. Bryan: Yes, sir, that was all explained, and the Commission said in that case they found nothing to condemn in the Illinois Central and Y. & M. V. rates, Louisville compared to Cairo, 2 to 5 cents, Louisville over Cairo, from points in Mississippi, common points.

Mr. Callaway: And two cents, Louisville over Cairo, from other stations in Mississippi?

Mr. Bryan: Yes, sir.

Mr. Callaway: Now explain the rate adjustment that applies to the hardwood lumber as distinguished now from the pine section.

Mr. Bryan: As to the rates on hardwood lumber, especially cottonwood and gum, the situation is entirely different. The Commission is familiar with the conditions under which the present very low rates on this kind of lumber were established. At the time the low rates were issued on cottonwood and gum lumber, those grades were practically unknown to the commercial world, and there was no market for either cottonwood or gum. Vast quantities of both grew along the lines of the Y. & M. V. Railroad, and some along the line of the Illinois Central. They grew principally, especially
446 cottonwood and gum along the waterways, and the logs as well as the lumber, were susceptible to water transportation. To introduce cottonwood and gum, our management established some very low rates which had the effect of introducing that class of material to the trade, with the result that both classes of lumber are today recognized by the trade, and there is a good market for both kinds, and the value compares favorably with any other kind of hardwood.

Mr. Callaway: In fact, it is true, is it not, that from Charleston and that section of the Y. & M. V., the predominating movement now is cottonwood and gum?

Mr. Bryan: Well not perhaps from Charleston, but it is from other sections on the line.

Mr. Callaway: Isn't Charleston the place where they have the biggest cottonwood and gum mill in the world?

Mr. Bryan: The biggest hardwood mill. They deal very largely in oak. While there is not nearly so much water competition today as formerly with respect to cottonwood and gum, those classes of lumber are very much more susceptible to water competition than is pine, and also more susceptible to water competition than are the other grades or kinds of so-called hardwoods, such as oak, ash, hickory and
so forth.

447 Water competition, therefore, played a considerable part in making the rates on hardwood lumber to Paducah the same as to Cairo, and another very potent influence testified to here this morning in confirmation of this statement was the fact that both Cairo and Paducah manufacture hardwood logs into lumber, while neither point manufactures pine logs received from points in our territory.

Mr. Callaway: The fact that cottonwood and gum and these hardwoods in this Y. & M. V. territory grew away from the Mississippi river and grew very largely along the Yazoo, the Sunflower and a number of those jawbreaking rivers that you have down there in Mis-

Mississippi tributary to the Mississippi river, created the same water competitive conditions that brought those rates from the Y. & M. V. down less than the Illinois Central, and that condition prevailed generally throughout that territory, did it?

Mr. Bryan: It did.

Mr. Callaway: It is a fact that except on lumber the rates of the Y. & M. V. on other articles are higher than the rates of the Illinois Central, are they not?

Mr. Bryan: Generally speaking, they are materially higher.

Mr. Callaway: And that on lumber the rates of the Y. & M. V. are less than the rates of the Illinois Central or any other road in that territory?

Mr. Bryan: Well, the Y. & M. V. certainly was the first line that established, so far as I know, very low rates on cottonwood and gum lumber from points in the Mississippi Valley to the Ohio River, and the Illinois Central having a small quantity of those woods on its line, naturally had to follow the adjustment which had prevailed from cross country stations on the Valley road, just as the Mobile & Ohio, the N. O. M. & C. and the other Mississippi Valley lines had to adopt these rates as a competitive measure, the same as the Illinois Central adopted.

In addition to water competition, we find at Cairo, Paducah, Louisville, Evansville and other crossings, people getting logs right from the same territory, the same kind of logs, and milling them at these points of consumption and re-shipping, and putting the millers in Mississippi in competition with the local consumption, as well as to provide for rail carriage as against the water competition, these lower rates on cottonwood, gum and hardwood other than on pine were at that time considered necessary.

Mr. Callaway: Where cottonwood and gum and other hardwoods similar to the hardwoods produced and shipped from along the river and along the Y. & M. V. found over on the Illinois Central, the same classes of hardwood, it was a commercial necessity that rates from what we might call opposite stations over on the Illinois Central should be made the same or approximately the same as the rates that were in effect from the Y. & M. V.?

Mr. Bryan: The Y. & M. V. having vast quantities of this material on their line, the Illinois Central had to meet its rates; but when you get down south of Jackson, the situation is exactly reversed, because the Illinois Central had all the pine practically, and the Y. & M. V. had practically none, so the Illinois Central established the pine rates in competition with their Arkansas competitors and the Y. & M. V. followed along in order to put what little pine they had on their line in competition with the Illinois Central.

Mr. Callaway: But largely paper rates, I take it?

Mr. Bryan: Yes, they have some, but not any great quantity.

Mr. Callaway: Now, as I understand that northern Mississippi adjustment up to Memphis, between Memphis and Paducah and Cairo, to a certain extent the same class of lumber being found as was found in other portions of Tennessee and Kentucky, the same rates were carried both to Cairo and Paducah

Mr. Bryan: Yes.

Mr. Callaway: What effect did the N. C. & St. L., a line serving Memphis and Paducah and not serving Cairo, have on the rate adjustment from Memphis up to Paducah, as contrasted with Cairo?

Mr. Byran: The Nashville, Chattanooga & St. Louis Railroad operates over its own line from Memphis to Paducah, and does not operate into Cairo, has no interest at that point. Their only river crossing is at Paducah, and so far back as I have any knowledge of the situation, they have insisted so far as they could serve the local situation on carrying the same rates to Paducah as to Cairo, and that is very largely responsible for the rates from Memphis to Paducah today being the same as to Cairo, although practically all the lumber that is moving from Memphis is this cottonwood, gum and hardwood, which is more or less susceptible to water competition.

Mr. Callaway: The Nashville, Chattanooga & St. Louis Railway from Memphis carries the same rates to Paducah that the Illinois Central carries to Cairo?

451 Mr. Bryan: That is right.

Mr. Callaway: But the Nashville, Chattanooga & St. Louis Railway carries higher rates from Memphis and its connection to Cairo, does it not?

Mr. Bryan: Very much higher.

Mr. Callaway: Than the Illinois Central carries to Cairo?

Mr. Bryan: Yes, very much higher.

Mr. Callaway: That is, I mean the situation would be reversed as to this line to Paducah and the lines west of the Mississippi river?

Mr. Bryan: Their rates to Cairo are very much higher than those of the Illinois Central. Summarizing, the reason why rates on pine lumber from our territory to Cairo are lower than to Paducah is because the Cairo rates are depressed below the normal basis by rail competition from competing points of manufacture, while the hardwood rates including cottonwood and gum, are usually the same to both points, because of water competition influences, and also because of competition both at Cairo and Paducah, with manufacturers cutting hardwood logs.

The influences and conditions which resulted in the abnormally low rates on cottonwood and gum and to a somewhat lesser extent on oak and other hardwoods have now practically disappeared, and there is in our judgment no transportation reason existing for lower rates on these classes of lumber than on pine; and as I have previously testified in other cases, it is our purpose as soon as we can get around to it to revise all of these rates, making them the same as on pine lumber.

Mr. Callaway: That has been done from all this territory up to Memphis, has it not?

Mr. Bryan: Yes, sir, it has only recently been done to Memphis in accordance with the decision of the Commission in the Memphis case.

Mr. Callaway: You mean the Commission approved it?

Mr. Bryan: The Commission approved it.

Mr. Callaway: That you have made the rates the same?

Mr. Bryan: They did.

I should probably also say that from stations on the Alabama & Vicksburg, Gulf & Ship Island, Mississippi Central, Mobile & Ohio, New Orleans & Northeastern, New Orleans Great Northern, New Orleans, Mobile & Chicago and the Southern Railway in Mississippi, rates are generally speaking the same as from opposite stations on the Illinois Central Railroad. From stations on the Fernwood & Gulf, Kentwood & Eastern, Kentwood, Greensburg & South-
 453 western, Liberty-White, Natchez, Columbus & Mobile, New Orleans, Natalbany & Natchez and other similar small lines in the Mississippi Valley, the rates are made with relation to a differential above the rates from the points at which they connect with the Illinois Central.

Mr. Callaway: You mean as a small addition of one cent or two cents or as the case might be?

Mr. Bryan: Yes, sir.

Mr. Callaway: But the basis or the relative adjustment is precisely the same?

Mr. Bryan: Yes, sir, the same difference as exists in our own rates.

Mr. Callaway: Mr. Bryan, reference has been made to the bridge at Cairo. Please state what influence the bridge at Cairo and the bridge toll therefor had in building and making rates to Cairo from points on the Illinois Central and the Yazoo & Mississippi Valley railroads.

Mr. Bryan: Because of the competitive influences which we encounter at Cairo, and to which I have just referred, it has been impracticable for us to consider the Cairo bridge in making our rates to Cairo; and while it is doubtless true that in order to reach Cairo
 454 we must cross the Ohio river, and that we use what is known as the Cairo bridge for that purpose, it is not true that our rates to Cairo include two cents or any other amount for bridge service in the sense in which that expression is usually interpreted.

In other words, our rates to Cairo are compelled rates, abnormally low, and were not made by adding two cents or any other amount to what we could consider just and reasonable rates to the south bank of the Ohio River opposite Cairo, did we not encounter the controlling competitive influences at Cairo which I have just mentioned.

As proving the correctness of this statement, it is only necessary to invite attention to the fact that the Mississippi Central, Gulf & Ship Island, Alabama & Vicksburg, New Orleans Great Northern and our other Mississippi Valley connections receive exactly the same proportions on lumber originating at their stations when destined to local points on the Illinois Central Railroad south of Cairo and Paducah to which we apply the Cairo-Paducah rates, as they get on similar traffic destined to Cairo and Paducah.

In this connection, I might also refer to the statement of the Commission on page 515 of Opinion No. 2375, in which they say:
 455 "Complainant also directs attention to the fact that to enter Cairo a bridge service is necessary, the charge for

which by the Illinois Central Railroad, when occasion arises for separate statement, is 2 cents per 100 pounds. So far as the line haul is concerned, therefore, complainant argues that the rate to Cairo, less the bridge charge, is actually one cent below the charge to Memphis. The fact that the rate of 14 cents per 100 pounds applicable to Cairo applies also on shipments to points south of this bridge, which, therefore, do not require bridge service, makes it impossible to follow complainant's argument on this point."

Mr. Callaway: In that connection, the rates from Mississippi Valley territory that you have described, which apply at present to Paducah and Cairo, apply how far south of Paducah and Cairo, respectively?

Mr. Bryan: Apply on the line running down towards Memphis—they apply to the first station north of Memphis. In other words, the rate on pine lumber from pine territory to the first station north of Memphis and to the first station north of the Mississippi-Tennessee state line practically is 14 cents. There is a blanket rate from there.

Mr. Callaway: That is what the Commission referred to 456 when they said that the bridge toll had nothing to do with the rate to Cairo?

Mr. Bryan: We apply the Cairo rate to points as far south as the Mississippi-Tennessee state line, and in dividing we allowed these carriers the same proportion on business destined to these intermediate stations as we did on business destined to Cairo.

Mr. Callaway: That is true also of Paducah, isn't it?

Mr. Bryan: That is true of Paducah, yes, sir.

Mr. Callaway: State whether or not you consider the rates now existing on lumber from points of origin along the lines of the Illinois Central, the Yazoo & Mississippi Valley and these Mississippi Valley lines that you have mentioned, to Paducah, Kentucky, reasonable, and give your reasons for any opinion which you may express.

Mr. Bryan: I consider the present rates to Paducah unreasonably low. In the first place there is in my opinion no reason why the rates on pine lumber from our stations to Cairo should be less than 16 cents, which is the rate from competing points of production west of the Mississippi River. I have just expressed the opinion that the rates on cottonwood, gum and other hardwood lumber 457 should not be less than on pine. I have also expressed the opinion that the rates on all kinds of lumber to Paducah reasonably be higher than to Cairo because the competition at Paducah is not nearly so strong as at Cairo. I conclude, therefore, as an illustration, that from points on the Illinois Central and Yazoo & Mississippi Valley roads south of Jackson and Vicksburg, Mississippi, the rates on all kinds of lumber to Cairo should not be less than 16 cents, and that the rates on all kinds of lumber from the same points of origin to Paducah should not be less than two cents per 100 pounds higher than to Cairo, or 18 cents. As a matter of fact, there are no conditions either commercial or transportation which

reader necessary lower rates than 16 cents from points south of Jackson and Vicksburg to Cairo and 18 cents to Paducah.
458 I think the rates from Memphis to Paducah should be at least two cents higher than Cairo, and that the rates from intermediate points should be graded from 12 cents at Memphis to 18 cents at Jackson and Vicksburg.

Mr. Callaway: Wherever rates are less to Cairo than to Paducah, that is a concession to the normal condition?

Mr. Bryan: Yes, it is.

Mr. Callaway: As further illustrating the reasonableness of those rates, I understand you to say that these present existing rates to Paducah and to Cairo are the rates that were put in in 1907 or 1908 in response to the order of the Commission in the Central Yellow Pine and the Tift cases, and those existing rates now to Cairo and Paducah are lower than the rates which the Commission in the recent Fourth Section cases required the carriers to put in. That is true, is it not?

Mr. Bryan: Yes, sir, we did not have any Fourth Section complication, Mr. Callaway, you know, except perhaps with respect to Vicksburg and Natchez.

Mr. Callaway: But other lines did.

Mr. Bryan: Yes.

Mr. Callaway: And the rates that are now in effect are
459 the rates that are admitted as reasonable rates to which the carriers' rates must agree?

Mr. Bryan: Yes, sir; that is right.

Mr. Callaway: State whether prior to the advance in 1903, practically all of the lumber—at least, a large proportion of the lumber which the Illinois Central and the Y. & M. V. hauled to Cairo, Paducah and other Ohio River crossings, St. Louis and points beyond, and the great markets of the Central Freight Association, originated on the lines of the Illinois Central, and what is the condition at present in that respect?

Mr. Bryan: Yes, sir, prior to the advance of 1903 practically all of the lumber which we hauled to the Ohio River originated on our line. As a matter of fact, a number of our now most important connections in the Mississippi Valley, so far as lumber traffic is concerned, were not built in 1903.

Mr. Callaway: What is your proportion at the present time, approximately?

Mr. Bryan: Approximately 80 per cent of our pine lumber, and some 70 to 75 per cent of our hardwood lumber originates on connecting lines. This is chargeable, of course, to the fact that the Illinois Central and Y. & M. V. roads are older lines, and that the forests adjacent thereto have been cut out, and the mills
460 formerly located on our lines have either discontinued operations or moved to new locations. This condition is growing worse and worse all the time, the few mills now remaining rapidly consuming their timber supply, and in a few years there will be practically no lumber originating at our own stations. This

is perhaps more true of pine than of hardwood, but it is distressingly true even of hardwood.

Mr. Callaway: Do you mean to say that when this rate of 14 cents was adopted to Cairo, the Illinois Central was getting 14 cents, and the 16 cents to Paducah, whereas today the conditions are so vitally changed since 1903, you are only getting about 80 per cent of the pine from connections and perhaps 70 per cent of the hardwood from your connections?

Mr. Bryan: That is correct. Of course, we divide the through rates with the connections, which means very much less revenue on the same tonnage than we got formerly. Those connections have been built, and they have to get some pay to run their railroads.

Mr. Callaway: What divisions do you make?

Mr. Bryan: The rate from stations on the Mississippi Central Railroad is 16 cents to Paducah, the same as it is from
461 our station in the immediate vicinity. There is a mill located at Brookhaven, Miss., a station on our line. The rate from Brookhaven and the rate from Mississippi Central stations is the same, 15 cents. Where formerly we got 16 cents for hauling lumber to Cairo and Paducah, we now only get 10 cents, while the Mississippi Central gets six. We haul it 421 miles for 10 cents.

Mr. Callaway: Taking the Mississippi Central Road as an illustration, it has never made any money yet, as its statements to the Commission show.

Mr. Bryan: I don't know much about that. Judging from the looks of things they are not very prosperous.

Some stations on the Gulf & Ship Island and New Orleans Great Northern roads, the rate is likewise 16 cents to Paducah, and we allow those lines 7 cents to Jackson, Miss. and we receive 9 cents for our haul from Jackson to Paducah, 367 miles.

From stations on the New Orleans, Mobile & Chicago Railroad south of Ackerman, the rate is 16 cents, out of which they get 8 and we get 8, our haul being 362 miles. You will see, therefore, that while in the old days we received the entire revenue on practically 100 per cent of the lumber moved from the Mississippi
462 Valley, we now receive only 50 or 60 per cent of the same rates on a majority of it, and our haul is of course just as great, and very much more expensive than it was when we ourselves originated the lumber.

Mr. Callaway: Had the expenses stood still, the rate of 14 cents to Cairo and 16 cents to Paducah in 1903, due to the conditions and nothing else that you have named, and the two and three line-hauls, would justify a higher rate than at that time, would they?

Mr. Bryan: Surely.

Mr. Callaway: Expenses have not stood still, have they?

Mr. Bryan: No, they have increased, I don't know to what extent, but our reports are on file with the Commission and will indicate.

Mr. Callaway: But you do know that the reports show a very sharp increase?

Mr. Bryan: I know it is a matter of common knowledge that they have materially increased.

Mr. Callaway: Have you prepared any statement comparing some of the rates from the Mississippi Valley to Paducah with the rates from other lumber producing territory? If so, file it and just call attention to some of these rates and make any comment you wish.

463 Mr. Bryan: I file as exhibit number two, a statement showing in comparison with rates from important points on our lines south of the Ohio River to Paducah, Ky., the rates between other points, some of which are on our own line, some of which are not.

(The statement so offered and identified was received in evidence and thereupon marked "Bryan Exhibit No. 2, received in evidence September 17, 1913" and is attached hereto.)

Mr. Callaway: These comparisons you made in this statement are gathered from Ohio River points and points in C. F. A. territory, are they not?

Mr. Bryan: I selected that north of the Ohio River, because it is usually understood that rates north of the Ohio River are very much lower, or should be very much lower than the rates for the same service south of the Ohio River?

Mr. Callaway: Generally speaking the rates from C. F. A. territory as compared to the general run of rates in the south are just about one-half?

Mr. Bryan: They are very materially lower.

Mr. Callaway: On the class rates and the general commodity rates that exist?

464 Mr. Bryan: Still this exhibit shows that our rates to Paducah for the service performed, even considering one line rates now, compare very favorably with the rates from Ohio River crossings to points in Central Freight Association territory.

Mr. Callaway: And you have used Louisville, Henderson, Paducah and Cairo here to illustrate those rates?

Mr. Bryan: Yes, sir.

Mr. Callaway: From Louisville I take it over to C. F. A. territory there is a bridge charge of one cent which goes into these rates?

Mr. Bryan: I think that is true, isn't it, Mr. Norman?

Mr. Norman: Yes, at present.

Mr. Bryan: There are a number of other illustrations. As a matter of fact, that series of illustrations could be multiplied indefinitely but there are a number of others that I can call attention to. Here is one from Eggleson, Minn. to Milwaukee, Wis., one of the biggest consuming points in the United States, a distance of 294 miles, the rate is 14 cents, the same as we charge for hauling it practically 600 miles into Paducah.

465 Mr. Callaway: These comparisons are tariff comparisons, and are subject to either side. I suppose it would not be necessary to go into those figures because the information given is open to them as well as it is to us, unless you have something more you wish to call attention to.

Mr. Bryan: I think that is enough.

Mr. Callaway: Speaking of the competition that exists at Cairo, have you any data as to the movement of logs and so forth by water to Cairo?

Mr. Bryan: Yes, sir.

Mr. Callaway: Read it.

Mr. Bryan: During the year ending July 31, 1912, there were approximately 1500 cars of lumber received at Cairo by water, possibly from points south of Greenville, Miss., and therefore every bit of it competitive with rail carriers. At the time I made that statement in connection with the hearing had here on docket No. 4942 in February, 1913.

In addition to the 1500 cars which had moved into Cairo by water during the year ending July 31, 1912, 143 cars moved from January 1st to February 13th, 1913, and 100 carloads were then being transferred from barges of lumber, and at the time I was testifying there was another barge with 125 cars in sight on that date. That made approximately 2000 carloads of lumber in 18 months, or 466 about 19 months, with the period from August 1st to January 1st missing.

Mr. Callaway: In the Sondheimer complaint, involving complaints as between rates to Memphis and Cairo, the Commission in its report found, did it not, that substantially 50 per cent of the lumber that moved into Cairo came in by river?

Mr. Bryan: Yes, sir, and I have had prepared within the last few days a statement showing the movement by river to Cairo—this is by the Mississippi River, back down the Ohio, or any other river, but from points in our territory south of Cairo from August 17, 1910, to August 31, 1913, with the period between March 15, 1911, and June 19, 1911, missing, for which we could not find the records, there were 2,888 carloads of lumber moved to Cairo by water, during which same period there was not a carload moved into Paducah by water from our territory.

Mr. Callaway: Practically all of the lumber which entered Cairo by water was reshipped from that point by rail, was it not?

Mr. Bryan: All of it practically. Of the 2000 cars concerning which I testified in February, 1913, less than 200 cars of the 467 2000 were consumed locally at Cairo. The other 1800 cars moved north from Cairo via rail and principally by the Illinois Central Railroad, out of which we obtained a revenue ranging all the way from 5 to 18 and 20 cents per 100 pounds.

Mr. Callaway: Nearly as much lumber entered Cairo by water as the Illinois Central Railroad moved in by rail.

Mr. Bryan: I would not be surprised if they moved in more than we did, if you include lumber which goes to Cairo for change of destination, of consignee, I am satisfied more lumber does move by water than by rail into Cairo, if you eliminate that.

Mr. Callaway: The rates from Mississippi Valley territory, from all this territory under fire in this complaint to Cairo are really and substantially proportional rates, are they not?

Mr. Bryan: Yes, they are.

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Mr. Callaway: Intended to cover lumber which should be re-shipped?

Mr. Bryan: Of course, they do apply on what little lumber stops there.

Mr. Callaway: But it is not there brought in competition with the water lines?

468 Mr. Bryan: Yes, sir.

Mr. Callaway: Both the lines west of the Mississippi and east of the Mississippi in turn have their rates controlled to a great extent by such competition?

Mr. Bryan: Yes, sir; and the Commission itself has said that the rates through Cairo were very largely proportional rates, reshipping rates.

Mr. Callaway: Said that in a recent case?

Mr. Bryan: Said that in a recent case.

Mr. Callaway: Is there anything further, Mr. Bryan, that you wish to call to the attention of the Commission?

Mr. Bryan: I find I have the exact figures here for the year ending July 31, 1912, which I just gave from memory. During the year ending July 31, 1912, we handled 2,435 carloads of lumber into Cairo, all of which except 180 cars were reshipped to points north of Cairo. That is the rail movement. The water movement was substantially as I gave it, and that means that about as much lumber during that particular period moved by water into Cairo as we moved by rail, and practically all of the lumber that we moved by rail was reshipped, rather the destination was changed. What I mean by reshipped, there is no arrangement at Cairo by
469 which they can yard and saw lumber except a local in and out.

Mr. Callaway: Mr. Bryan, you are familiar, are you not, with the fact that from this Louisiana territory and Arkansas territory involved in this complaint, that the rates to St. Louis, according to my recollection, are 18 cents, and Kansas City 24 cents.

Mr. Bryan: Yes, sir.

Mr. Callaway: The distance is practically the same to these two points, is it not?

Mr. Bryan: Yes.

Mr. Callaway: Those rates were sustained by the Commission in the recent switching case to which you referred in your testimony?

Mr. Bryan: Yes sir, they were.

Mr. Callaway: The Commission held, did it not, that St. Louis and Cairo were the two highly competitive points in the valley, and the rates to St. Louis were much more competitive than to Kansas City for the same distance?

Mr. Bryan: Yes, sir.

Mr. Callaway: So far as the territory from which rates to Paducah are two cents higher than they are to Cairo is concerned, it
470 corresponds very much, does it not, to the situation west of the river, of Kansas City and St. Louis?

Mr. Bryan: I think so, except in one case they justify a difference of six cents here, but only allow us two.

Mr. Callaway: But from the hardwood territory, due to the competition that existed when the rates were made largely from the Cumberland and the Tennessee Rivers to intermediate points, you have been giving them from hardwood territory the same rates up to Paducah as you give to Cairo?

Mr. Bryan: Yes sir, that is true.

Mr. Callaway: Dating back to the time when the water competition on the rivers of and in itself was quite keen from southwestern territory?

Mr. Bryan: Yes, sir.

Mr. Callaway: I will ask you to explain that rate from Bogalusa, La.?

Mr. Bryan: There seems to be two tariffs in effect from Bogalusa, La. to Paducah. Our tariff No. 510-A I. C. C. No. 4278, issued under specific concurrence from the New Orleans Great Northern road publishes a rate of 16 cents.

Mr. Callaway: To Paducah?

Mr. Bryan: To Paducah. I understand they have their own tariff I. C. C. 230 which publishes a rate of 18 cents. That
471 latter tariff has routing notes in it, and the so-called preferred route via which the 18 cent rate applies is via Slidell and the New Orleans and Northeastern Railroad; but as a life preserver they have an elastic routing clause in there that if for any reason it is impractical to use that route, they reserve the right to use any other route, and that would probably make the 18-cent rate apply, to so far as that tariff is concerned via any route by which they choose to send the business. If they should send it out through Jackson, we would immediately have a conflict of rates, and then under the ruling of the Commission in case of conflict, the lower rate would apply, 16 cents, so there is no doubt about the rate from Bogalusa to Paducah being 16 cents if it moves via Jackson and the Illinois Central lines.

Cross-examination:

Mr. Norman: And 18 cents the other way?

Mr. Bryan: 18 cents via Slidell, that being the route over which the line hauls it, I think.

Mr. Norman: Unless the shipper routed it via Slidell, being their preferred route, it would move via Slidell and take the 18-cent rate?

472 Mr. Bryan: Yes, if it moved via Slidell it would be 18 cents.

Mr. Norman: Unless the shipper routed it, it would move via Slidell?

Mr. Bryan: No, I think not.

Mr. Norman: They say that is their preferred route.

Mr. Bryan: Under the tariff, but there is another tariff as a matter of fact, M. Norman, practically controlling it in the absence of specific routing.

Mr. Callaway: There is no difference between them, there is a 16-cent rate from all that territory.

Mr. Norman: Mr. Bryan; as I understand you the rates on hardwood lumber from all points on the I. C. and the Yazoo & Mississippi Valley north of Jackson and Vicksburg are the same to Cairo as to Paducah?

Mr. Bryan: Yes, sir; that is correct.

Mr. Norman: South of those two points on both roads the rates are two cents higher?

Mr. Bryan: Yes, that is correct, but that is not hardwood lumber down there.

Mr. Norman: On the hardwood to Paducah than to Cairo?

Mr. Bryan: That is true, but there is none there.

Mr. Norman: Do you mean to say there isn't any hardwood on the Yazoo & Mississippi Valley south of Vicksburg?

473 Mr. Bryan: None to amount to anything.

Mr. Norman: Now, this competition that you assert is felt at Cairo from the western lines and other lines west of the Mississippi Valley, does not seem to be reflected in the rates to Cairo and Paducah; at least, it does not cause any difference in the rates to Cairo and Paducah, and as between them is not reflected at all, save for the fact that you make no additional charge for crossing the Ohio River and getting to Cairo and to this territory north of Vicksburg and Jackson; that is true, isn't it?

Mr. Bryan: I do not get your question.

Mr. Norman: The competition that you refer to as existing at Cairo from the western lines, does not cause any difference in the rate to Paducah as compared with the rate to Cairo?

Mr. Bryan: Are you speaking of hardwood now?

Mr. Norman: On hardwood?

Mr. Bryan: I did not give that as a reason for the rate on hardwood lumber to Cairo. In referring to western competition, Arkansas and northern Louisiana competition, I referred specifically to the rates in-bound.

474 Mr. Norman: What competition is there on hardwood at Cairo that does not exist at Paducah?

Mr. Bryan: Well, I imagine there is some reason, some advantage that Cairo possesses over Paducah in the movement of lumber by water, from the fact that Cairo receives vast quantities of lumber by water and Paducah receives none.

Mr. Norman: What I am trying to get at is, what is the reason for the difference of two cents on hardwood in favor of Cairo as against Paducah as to that territory south of Vicksburg and Jackson as to such hardwood as there is there? You say there is not much, but of course, there is some, some moves from there.

Mr. Bryan: Mr. Norman, you take the hardwood territory which is north of the A. & V. Road, and generally speaking the hardwood adjustment there is the lumber rate. There are some rates that are different on pine from the hardwood rates, but generally speaking the rates on pine from hardwood territory are the same as on hardwood, and from part of the territory the rates on hardwood are the same as on pine. There is no appreciable quantity of hardwood on the Illinois Central. There is scarcely any at all south of Jackson,

Miss., and there is none at all that I know of on the Mississippi Central or the New Orleans Great Northern or the Gulf & Ship Island. They have probably more of it than the other lines, and they have so little of it that it is a negligible quantity.

Mr. Norman: But as to such hardwood as there is south of the Vicksburg-Jackson Line, you know of no reason why there should be a difference in the rate to Paducah and the rate to Cairo, other than the fact that there is a difference in the pine rate which has been carried over to the hardwood rate?

Mr. Bryan: I have given you one other good reason, that Cairo hauls three or four thousand carloads of that particular kind of lumber into Cairo by water in a year and a half or two years, and Paducah does not get a single car. I consider that a very potent reason.

Mr. Norman: But this lumber can be carried to Paducah via river just the same as to Cairo, can it not?

Mr. Bryan: It can be carried to Paducah by river. I don't know whether it has the same rate, or what the conditions are at Paducah and Cairo, how they differ, but the fact remains that it is not carried to Paducah by river, we have not got the competition at Paducah with the river that we find at Cairo. We have a theoretical competition that we suggested, it is true. The river is here and if these people have competition they can use the river. It is here. Why don't they do it? Cairo does it, and gets perhaps some advantages from it.

Mr. Borman: Now, turn to the pine and adjustment, the rates on pine, such yellow pine as there is north of Vicksburg and Jackson, are the same to Cairo and Paducah as I understand it?

Mr. Bryan: Not if you are speaking of the main line at points where there is no pine, but if you go over on the Aberdeen branch where there is pine, you will find the pine rates to Paducah are two cents higher, and to Cairo, than they are from the other pine producing territory south of Jackson.

Mr. Norman: You say that the sole reason for that, as I understand you, is competition from lines west of the Mississippi that bring pine from territory west of the Mississippi River to Cairo.

Mr. Bryan: That is one of the principal reasons.

Mr. Norman: Do you know of any other?

Mr. Bryan: Why, the rate on pine should be 14 cents—

Mr. Norman: No, I am not talking about what the rate should be. I am talking about why there should be a difference.

Mr. Bryan: Why, I think I have given the principal reason, if not the only one.

Mr. Norman: And yet the rate on pine from west of the Mississippi River is the same as the rate—I mean to Cairo is the same as the rate to Paducah from east of the Mississippi River, and two cents higher than the rate to Cairo from east of the Mississippi River?

Mr. Bryan: You mean by that that our rate to Cairo is unnecessarily low, if the competition west of the—from points west of the Mississippi is what fixes our rates at Cairo? I agree with you.

Mr. Norman: Isn't it true that the rate on pine from the Mississippi river to Cairo is two cents higher than your rate?

Mr. Bryan: Yes, sir, but not by our consent. We advanced it to 16 cents and the Commission disapproved it. It was taken in court and I don't know but what it went to the Supreme Court of the United States. Did it, Mr. Callaway?

Mr. Callaway: Yes, sir.

478 Mr. Norman: In a different case.

Mr. Bryan: We do not think, with all due respect to the Commission and the Supreme Court, that our rate ought to be any lower than west of the river.

Mr. Callaway: But the advance west of the river which was made contemporaneously was finally sustained?

Mr. Bryan: Yes, and ours was condemned.

Mr. Norman: Inasmuch as there is the same river at Paducah as there is at Cairo and no movement via that river to Paducah and there is to Cairo, don't you suppose that the way to account for that fact is the further fact that the rates from Cairo north are very much more favorable than they are from Paducah north?

Mr. Bryan: I did not understand we were trying the rates from Paducah north.

Mr. Norman: No, but we are trying to explain why there has been no movement to Paducah by river. You said you could not understand that—

Mr. Bryan: Here is the river, and it seems to me if I was located in the lumber business at Paducah, suffering as these people say they are, I would have been looking around long ago for some way to overcome that trouble, and I would have gone to the Ohio

479 river or would have gone to the Mississippi river to do it.

Mr. Norman: You made some reference, Mr. Bryan, to the opinion of the Commission in the case of the Norman Lumber company, and you stated that the Commission had there upheld the differential of two cents from Memphis and points north, and 5 cents south of Memphis on the Yazoo & Mississippi Valley in favor of Cairo as against Louisville. Don't you know, Mr. Bryan, that the Commission in that opinion expressly put that upon the ground of the difference in distance, and the Commission expressly found in that opinion that there was no justification for any difference in the rates to Cairo and Louisville from equal distant territory?

Mr. Bryan: The Commission used the words, "Territory of origin," or practically that, territory of origin, equally distant, but when they used that expression they must certainly have known that there is no territory of origin equally distant from Cairo and Louisville in the Mississippi Valley on the lines of the Illinois Central and the Yazoo & Mississippi Valley, consequently they could not possibly have been referring to our territory when they used the expression "equally distant."

480 Mr. Callaway: It had reference to the southeast.

Mr. Bryan: They were undoubtedly referring to the south east, because there could not possibly be a point in the Mississippi Valley where the distance is the same to Cairo as to Louisville. They

specifically did state as to the rates from Illinois Central and Y. & M. V. stations south of Memphis, Tennessee:

"We find that they do not unjustly discriminate in favor of Cairo as against Louisville, Kentucky."

Mr. Norman: Did they not base that upon the difference in distance?

Mr. Bryan: But they fully understood the reasons that had led up to the adjustment in question.

Mr. Callaway: Isn't it true that from Mississippi Valley territory in that case, that some of the territory had only a two cent differential, Louisville over Cairo, for a greater distance, and some other points in that territory the differential was 5 cents, wasn't that the ground of the opinion?

Mr. Bryan: Yes, sir.

Mr. Norman: Mr. Callaway, I believe I would prefer to have you reserve your redirect examination.

Mr. Callaway: You are right, sir, I should not have broken
481 in, except you asked about a record in which you happen to be counsel and so did I.

Mr. Norman: Mr. Bryan, in making those differences on rates to Cairo and Paducah from territory north of the Vicksburg-Jackson line, and making a difference in said rates from territory south of said line, are you not reversing the general rule, that differences decrease as distances increase?

Mr. Bryan: I do not know of any such general rule. We have to make freight rates not by theory, but to meet actual conditions, and the conditions surrounding the transportation of pine lumber from certain territory are absolutely dissimilar to what they are for cottonwood, gum and hardwood.

Mr. Norman: What is the rate on pine lumber south of the Vicksburg-Jackson line?

Mr. Bryan: Fourteen cents to Cairo.

Mr. Norman: And sixteen cents to Paducah?

Mr. Bryan: That is right.

Mr. Norman: And the competition that you are meeting from west of the west side of the river is 16 cents to Cairo?

Mr. Bryan: That is right, more than meeting it.

Mr. Norman: Does this pine continue to move from west of the Mississippi river to Cairo on a 16 cent rate in competition
482 with your 14 cent point?

Mr. Bryan: Mr. Norman, there is more of it moving into Cairo today than perhaps ever before in the history of Cairo from points on the west side of the river; is that true, Mr. Ladd?

Mr. Ladd: Yes, sir.

Mr. Bryan: Mr. Ladd is our agent at Cairo. Notwithstanding our two cent lower rate from points east of the Mississippi river, I understand that western pine is gradually taking the place of the eastern pine at Cairo for reshipment to points north.

Mr. Norman: That would seem to indicate then that this competition—that you do not have to have those rates at all in order to move the business?

Mr. Bryan: That is true, and if two cents doesn't protect Cairo on that business, two cents differential above Cairo is not going to protect Paducah's part of it.

Mr. Norman: Don't you suppose that the man that absorbs that two cents is the manufacturer at that point west of the Mississippi river, and not the dealer at Cairo?

Mr. Bryan: I don't know who absorbs it. I think probably the fellow who finally puts it in his house pays all of it and
483 then some.

Mr. Norman: Now you testified that your rates have been decreasing by reason of the fact that you were having to divide them which you did not have to do, and that your expenses of operation had been increasing. Isn't it true that your net revenue from operations has increased since 1903, I mean your revenue from rates, by reason of the fact that you do divide it?

Mr. Bryan: There is no question in the world but that our revenue from the transportation of pine lumber and other kinds of lumber is very much less today than it was in 1903, that is, provided that the tonnage of the railroad company is equal, and in order for us to get the same money out of our lumber traffic now as we formerly received, we would have to haul perhaps fifty or sixty per cent more of it now than we did in 1903. There is no question but what hauling a carload of pine lumber for 14 cents or hauling the same car for 10 cents or 8 cents or 7 cents, you get less at the latter figure than you do at 14 cents.

Mr. Callaway: I would like to submit a statement, if your Honor please, later, just on that point, showing the net results from operations for the past five years.

484 Mr. Norman: Certainly, but your questions were directed to 1903, and I would like to have the comparison of 1903 with the last two years.

Mr. Callaway: We will give it to you.

Mr. Bryan: I was going to qualify my statement by saying that I really should not have our results from net operations complete for 1903.

Mr. Norman: But don't you think from your general knowledge, that your increased tonnage since 1903 has enabled you to earn as much as you did at that time?

Mr. Bryan: I really do not know.

Mr. Norman: While you do not earn as much on each car, yet your increased tonnage has enabled you to earn as much on your total operations?

Mr. Bryan: I don't know, but even if I did, I do not consider that any argument in favor of reducing the rate. Because we happen to be a little prosperous, there is no reason why we should be compelled to give it away to somebody if the rates are just and reasonable rates.

Mr. Norman: You will admit that you are prosperous?

Mr. Bryan: If rates are just and reasonable, there is no reason why they should be reduced.

485 Mr. Norman: Mr. Bryan, this is not an attack on the reasonableness of your rates. It is not the desire as I understand

it, and as I heard it stated by the complainants, to reduce your revenue at all. What they want to do is to be put on an equality with Cairo.

Mr. Bryan: By advancing the rate to Cairo?

Mr. Norman: If you are inclined to do that by advancing the Cairo rate, all well and good.

Mr. Bryan: That is very sweet of you, I appreciate that.

Mr. Norman: We do not like you to make the statement that we are trying to take something away from you just because you are prosperous.

Mr. Callaway: I believe we would have cut the record down very materially if I had thought about asking my brother to make that statement in the beginning, because I did think he was attacking the reasonableness of the rates.

Mr. Bryan: I thought so until this moment.

Mr. Norman: I believe that is all.

Mr. Callaway: Your Honor, that completes our case so far as the Illinois Central and the lines I represent are concerned.

(Witness excused.)

486 C. C. P. RAUSCH was called as a witness, and having been duly sworn, testified as follows:

Direct examination:

Mr. Wright: Mr. Rausch, what is your position with the Missouri Pacific-Iron Mountain System?

Mr. Rausch: Assistant General Freight Agent.

Mr. Wright: How long have you been connected with the traffic of those lines?

Mr. Rausch: About twenty-five years.

Mr. Wright: And you are generally familiar with traffic conditions on the two lines, are you not?

Mr. Rausch: Yes, sir.

Mr. Wright: Referring specifically to the St. Louis, Iron Mountain & Southern, how do they rank as a lumber producing line in Southwestern territory?

Mr. Rausch: Well I think it is generally conceded that the Iron Mountain in point of mileage and in point of tonnage is the largest lumber producing line in Arkansas and in Louisiana.

Mr. Wright: I wish you would explain the location of that line, particularly with relation to Cairo and Paducah. First, the Iron Mountain does not have any line into Paducah?

487 Mr. Rausch: No, sir.

Mr. Wright: Do they reach Cairo?

Mr. Rausch: The St. Louis, Iron Mountain & Southern Railway operates west of the Mississippi River. It is practically a north and south line operating from lumber territory to Memphis and Cairo, Thebes, St. Louis and East St. Louis, so far as the Mississippi River is concerned, having no rails east of the Mississippi River. In this respect the Iron Mountain is a little bit different than some of the other lines serving the same territory, particularly the Louisiana lines.

By that I mean starting at the north end the Vicksburg, Shreveport & Pacific is an east and west line closely affiliated with lines that reach as far east as Cincinnati and Chattanooga.

The L. R. & N. is an east and west line; the Texas & Pacific is an east and west line, the Southern Pacific is an east and west line.

Our situation in that respect is a great deal like the Rock Island and the Cotton Belt, though the Cotton Belt's situation is possibly more nearly analogous to ours versus the Rock Island, the Rock Island

488 being practically an east and west and a north and south line but not reaching the crossing north of Memphis by any direct line of their own, though they have a line to St. Louis.

Mr. Wright: I wish you would explain how the rates are made generally from points on the Iron Mountain route to points east of the Mississippi River.

Mr. Rausch: The rates on lumber from points in Arkansas and Louisiana generally speaking to points east of the Mississippi River both north and south of the Ohio, are made on combinations of locals through Mississippi River crossings. Generally the Ohio river points and points north thereof and east of the Mississippi River what is known as the Central Freight Association territory, the state of Indiana, Ohio, Michigan, and so forth, the rates make through Cairo, at least, the original rates made that way, primarily for the reason that they were roads like the Cotton Belt, and the only Mississippi River crossing they had up to a few years ago was Cairo. Cairo they connected with the Big Four, which is part of the New York Central Lines which operate throughout Central Freight Association territory.

When the Iron Mountain built into Cairo, we found that situation and continued the rates on that basis, though as a matter of fact since the subsequent building of our Illinois line, with

489 respect to the Iron Mountain as well as the Cotton Belt, the Illinois, is on the same basis as Cairo. It might be termed

the combination point or breaking point. It is the point through which the rates make very largely, if not altogether, to Ohio river points and Central Freight Association territory.

Mr. Wright: And in that respect represents not only the measure of the rate, the through rate made on combination, but also represents the maximum earnings of the lines west of the river, which is touched upon very clearly by the Interstate Commerce Commission as being the proper adjustment in Volume 10, page 323, docket 14. I believe, in the case of the Chicago Lumber & Coal Company?

Mr. Rausch: Yes, sir, in which the Commission say this, speaking of Cairo:

"Cairo being the basing point for rates on this traffic into Central Freight Association territory, etc., from both east and west of the Mississippi River, the situation of the lines serving the west side with reference to this territory of destination is such that their rates to Cairo and St. Louis, respectively, on the traffic going beyond market the limit of their earnings thereon."

490 Therefore the situation at Paducah based on the low combination, which is through Cairo, is no different than other points similarly situated.

Mr. Wright: Cairo would be a one-line haul on the Iron Mountain road?

Mr. Rausch: Yes, sir, Cairo would be a one-line haul. That is, from points of origin on the Iron Mountain in the south to Cairo.

Mr. Wright: On shipments to Paducah, it would be necessary for the Iron Mountain to give up those shipments at Cairo to another line?

Mr. Rausch: Yes, we would interchange there with the Illinois Central, which would involve crossing both the Mississippi River and the Ohio River, and transferring.

Mr. Wright: And the rates, then, I understand, that run to Paducah, are made the same as the rates to other points east of the Mississippi River?

Mr. Rausch: Yes, sir, made on the lowest combination.

Mr. Wright: There is no difference as to any of those points?

Mr. Rausch: No, there is nothing peculiar about the Paducah situation. It has not been singled out and put on a higher basis than any other point.

Mr. Rausch: You made some reference to cross line roads in Southern territory, Louisiana for instance, the Vicksburg, Shreveport & Pacific, Texas & Pacific and the Sunset Central lines. What affect have those crosslines had upon rates from that territory?

Mr. Rausch: Well, I mentioned that preliminary to stating that the interests of course of a line like the V. S. & P. operating practically to Cincinnati would be entirely different than a line like the Missouri Pacific and Iron Mountain. I can recall in times past there have been a great many rates from northern Louisiana to points east of the Mississippi River made by the V. S. & P. that we did not meet. On the other hand, there have been a great many rates made from points east of the Mississippi river that the V. S. & P. did not meet. In the one case, we have no rails east of the river, in the other case, the V. S. & P. have no rails north of Shreveport, and that same situation is true as you go down in Louisiana. The Southern Pacific, for example, which is practically the most southern east and west line, operates through New Orleans and they interchange very freely with their connections at New Orleans, lines like the L. & N. and Illinois Central, and at Mobile with the M. & O., and naturally their policy in making joint rates to points east of the river would be a little bit different than a railroad like the Iron Mountain, whose policy would be to secure a reasonable maximum haul which we are entitled to under Section 15 of the act.

A railroad like the Texas & Pacific, which is also an east and west line, in order to enjoy some of the traffic via New Orleans, naturally would have to meet the rates as established by the Southern Pacific.

Those influences account for the fact of joint through rates from Alexandria and Lafayette, and points in the vicinity of Paducah; but as a matter of fact, that Southern territory is practically yellow pine territory, and, as I understand it, there is very little yellow pine moves either to Cairo or Paducah. On the other hand, what Paducah is contending for with reference to the hardwood lumber rate now, considering that we are practically the largest producing line for

yellow pine lumber—I think my statement is correct,—there is very little movement, because the movement from all our points and connections for the period of six months, November, 1911, to September,

1912, shows 76 cars to Cairo proper, that is, every alternate month is used, and it shows but 76 cars to Cairo proper, and it shows to Kentucky, the entire State of Kentucky, 16 cars.

Mr. Wright: That would indicate to you, would it not, Mr. Rausch, that the lumber consumed in this territory comes from some other point than the southwest as a rule?

Mr. Rausch: Yes, sir, it means that the bulk of the lumber consumed at Cairo proper comes in by water, and the bulk of the lumber consumed proper at Paducah comes from points east of the river, regardless of freight rates, because if we analyze this a little further, taking the general movement of our lumber from all points on our line to this territory east of the Mississippi river, and comparing it to states of equal magnitude, Kentucky with other states of equal magnitude in population and railroad mileage, we get about this result:

Alabama, six months, we handled two cars, the entire State of Alabama. Alabama has at least two million population and 5,000 miles of railroad.

Florida, one car.

Indiana, 1,329 cars.

Illinois, 5,161 cars.

In other words, to Illinois there was about 26 per cent of the tonnage. Of course Illinois means Chicago and St. Louis, and Chicago is recognized as practically the biggest lumber market in the country.

I could go on and enumerate other states, New Jersey, New York, all the way through, just a few cars.

Take Ohio, though, 1,061 cars. What does that mean? It simply means that the lumber is consumed at points like Cleveland, Columbus, Cincinnati, Sandusky, Toledo, and all of the points I mentioned, the rates made on combination through Cairo.

Mr. Wright: It indicates, does it not, that the rate to Cairo is more of a basing rate than a terminal rate?

Mr. Rausch: Yes, the Cairo rate is inordinately low. It is practically a basing rate for any point. The Cairo rates were known as being exceedingly low some years ago, and the Commission allowed us to advance the rate two cents per hundred pounds. They also sanctioned an advance in the St. Louis rate just recently, showing that those rates are entirely too low.

Mr. Wright: Have you any figures as to the tonnage of lumber passing through Cairo, or can you testify as to that of your own knowledge?

Mr. Rausch: Yes, I will just read some of them into the record and make a comparison of Cairo proper versus other Illinois points.

Of course that 5,161 cars I would hardly say moved through Cairo. Some of — may have, but the preponderance of it would move

through Thebes or East St. Louis, though it is fair to assume that a great deal of Ohio traffic would move through Cairo or Thebes.

Mr. Wright: And that that moved through Thebes moved on the Cairo basis, did it not?

Mr. Rausch: Yes, sir. The rates from the south to Cairo and Thebes and the rates from Cairo and Thebes to points beyond in Central Freight Association territory particularly are the same; in other words, it was simply a matter of placing Thebes on the Cairo basis.

Mr. Wright: What have you to say as to the reasonableness of the present rates from points on the Iron Mountain to Cairo and Paducah?

Mr. Rausch: The Cairo rates, as I stated, are inordinately low. The rates as originally adjusted on lumber, particularly to Cairo and St. Louis many years ago, were predicated on the sources of supply being a good deal nearer in point of mileage than they are today.

To go back to say 1909, in the Chicago Lumber & Coal case referred to, at that time it was found that the center of production of yellow pine for Memphis was Warren, Arkansas, which is on our line. Warren, Arkansas, is about 148 miles south of Little Rock.

In the Omaha case we found that the center of production had gone south at least twenty miles, and we figured Collinston, Louisiana, as the typical point, 168 miles south of Little Rock.

Subsequently, upon further investigation which I practically made myself, taking into consideration the total tonnage both as to number of cars and the tons our auditor compiled in what was known as the Joplin case, as well as testing that by checking the mills on our line in south Arkansas and Louisiana, and comparing their magnitude in thousand feet, annual or daily production on the mileage basis of the mileage south of Little Rock, and I found that Rochelle, Louisiana, was approximately the center of production, about 78 miles south of Collinston, or 285 miles south of Little Rock.

So far as the measure of the rate is concerned, during all this period almost the same rate has been pushed further south until so far as yellow pine is concerned at least, and this includes hardwood on the south end of the zone, identically the same rate applies now down to the Gulf of Mexico. In other words, the original rate to Cairo was made with reference to lumber produced about in the center of Arkansas. Those rates have been pushed down now gradually as the lumber has been cut out until we find that almost the same rates are about the center of Louisiana, for which of course we have received no additional compensation.

Therefore, comparing the rates to Cairo, and I might say rates to Memphis or St. Louis today on the mileage basis or per ton per mile showing with the situation ten years ago, we find that we are earning very much less actual net revenue on this lumber traffic now than we were then; all of which goes to show that the Cairo rates—the measure of the rate is inordinately low.

Mr. Wright: Have you any further statement.

Mr. Rausch: Of course that same situation is true of the rate—

the through rate on combinations to Paducah or to Cleveland or to Chicago or to any other point if lumber is purchased further south.

Mr. Norman: If they move a shipment on the Paducah
498 combination, it must move on a through rate, but if it did, it could not move on any combination, could it?

Mr. Rausch: By through rate, I mean the combination. I did not mention a joint rate.

Mr. Norman: It might move by combination on Cairo, but it could not move by combination on Paducah, could it, because the combination on Paducah would be higher than the combination on Cairo?

Mr. Rausch: I don't think you got my point. I said that the situation with reference to the inordinately low rate which has been created at Cairo, if you please, by projecting and extending the rate south as the lumber has been drifting further south, and that holds good with equal force to the through rate from point of origin to Paducah or the through rate to Cleveland or to Chicago or to any other points. They are all made on the lowest combination. I do not want to convey the impression that the Cairo rate is the only low rate. The Paducah rate is just as low.

In other words, I will put it this way. If ten years ago the center of production was at Little Rock and we made a rate to Paducah on that combination, by practically extending that rate down south,
it means that we are just receiving that much revenue today
499 from Paducah as well as any other point. I am trying to make it clear that Paducah is on the same relative basis as any other point on the Ohio river or in Central Freight Association territory off of our rails. When we speak of Cairo, we speak of a one-line haul, and we are speaking of the maximum revenue the Iron Mountain can receive on this lumber traffic.

Mr. Norman: And the Paducah rate from points on your line is made on the Cairo combination, is it?

Mr. Rausch: Yes, it is made the same as Evansville, the same as Indianapolis, Cleveland, Detroit, Nashville.

Mr. Norman: You mean made the same way?

Mr. Rausch: Made the same way, yes sir.

Mr. Wright: Mr. Rausch, have you anything to say as to the alleged discrimination between Cairo and Paducah as claimed by the petitioner further than you have already stated.

Mr. Rausch: Well, I don't just see where there is any discrimination. As a matter of fact, as I have explained the Cairo rate, if you simply treat it in the light of a rate, it looks possibly as though there might be some discrimination; but if Cairo does not do any business
on this rate or practically does not, I don't believe Cairo does
500 any more business on this local rate than Paducah does on its rate. I don't know anything about the tonnage to Paducah, of course, but the Cairo rate in and of itself is practically a proportional rate on business beyond.

Now, personally, I do not see why the Cairo rate should not be higher. Generally on traffic, merchandise traffic of all classes between Texas and Cairo, it takes the St. Louis rate. Between certain

points in Arkansas it takes the St. Louis rate, Fort Smith, for example.

Mr. Wright: Anything further you wish to say?

Mr. Rausch: No, I think that is all.

Cross-examination.

Mr. Norman: This is a rate than that is available to anyone that may be located at Cairo with a rehandling yard, is it? You say that it is practically a proportional rate, but as a matter of fact it is available to anyone located at Cairo with a lumber yard to rehandle it and then ship it out again?

Mr. Rausch: Yes, it is available, like any rate is available.

Mr. Norman: Is there anyone here representing the Rock Island?

Will there be any witness testify- for the Rock Island?

501 Mr. Johanson: Yes, sir.

Mr. Norman: Mr. Rausch, do you make any charge for crossing the Mississippi River at Cairo?

Mr. Rausch: Well we do not. We practically do not cross the Mississippi River at Cairo any more.

Mr. Norman: You cross it at Thebes?

Mr. Rausch: Cross it at Thebes.

Mr. Norman: Do you make any charge for crossing there?

Mr. Rausch: Well, no specific extra charge.

Mr. Norman: No arbitrary charge of any kind?

Mr. Rausch: Well it is not added arbitrarily at least, no. There is a charge there, there is a disability there.

Mr. Norman: Isn't your rate to Cairo the same as your rate to St. Louis?

Mr. Rausch: No, sir, our rate to Thebes is the same as to Cairo. We cannot add any bridge toll if we would like to, to make the rate to Cairo, unless we would make the rate higher than any other line, or unless we would make the rate to Cairo higher than Thebes, which we would not want to do. In other words, Cairo is the natural base point, and Thebes has simply been put on the Cairo basis.

Mr. Norman: Is there an arbitrary added or figured for
502 crossing either the Ohio or Mississippi River at Cairo by any line that you know of?

Mr. Rausch: Well, it is certainly given some consideration, yes. I have heard the testimony of the Illinois Central and they practically claim that they give it no consideration on account of the competition at Cairo, but we would give it consideration.

Mr. Norman: If you could?

Mr. Rausch: Yes.

Mr. Norman: As I understand your position, you are in a position where you cannot?

Mr. Rausch: We are in this situation, that if the rate was materially reduced by the east side lines, for example, 100 per cent, we would not meet it, considering the bridge tolls. In other words, the measure of a rate always in our mind has a great deal to do with the dividing it with any arbitrary or determining the fact whether we will extend it or not. Naturally the higher the rate, the greater the

division we will expect, the further we would be willing to extend the rate. The lower the rate, just the reverse would be true. It is particularly true of the lines west of the river. I know the Cotton Belt oftentimes don't meet a great many rates between Little Rock and Memphis as operated by the Iron Mountain and the Rock Island. The Cotton Belt certainly take into consideration the Memphis bridge toll and the arbitrary they pay the Iron Mountain between Fair Oaks and Westbridge, because they are important factors, and we would do the same thing on bridge tolls crossing the Mississippi river when the rates got so low that we had to sit up and take notice.

Mr. Norman: That is all.

(Witness excused.)

R. D. COLEMAN was called as a witness, and having been duly sworn, testified as follows:

Direct examination:

Mr. Wright: Mr. Coleman, you are connected with the St. Louis Southwestern Railway, I believe?

Mr. Coleman: Yes, sir.

Mr. Wright: In its traffic department?

Mr. Coleman: Traffic department, yes.

Mr. Wright: You have heard the statements of Mr. Bryan and Mr. Rausch, I believe, haven't you?

Mr. Coleman: Yes, sir.

Mr. Wright: How is the so-called Cotton Belt's new rate to Paducah made?

504 Mr. Coleman: We have no through rates to Paducah; in fact, all of our rates to points east of the Mississippi river are based on combinations through Thebes or Cairo. The rates to both those points are the same.

Mr. Wright: Then your rates are made just the same as Mr. Rausch explained the rates were made by the Iron Mountain?

Mr. Coleman: Just the same way, yes, sir.

Mr. Wright: How do your rates to Cairo apply?

Mr. Coleman: Our rates to Cairo apply via the Cotton Belt rails as far as Thebes, Illinois, and from Thebes to Olive Branch over the C. & E. I., and Olive Branch to Cairo over the I. C.

Mr. Wright: Do they apply via Memphis?

Mr. Coleman: They do not apply via Memphis, no.

Mr. Wright: Then as I understand it, the Cotton Belt has no rails into either Cairo or Memphis?

Mr. Coleman: No, sir.

Mr. Wright: Of its own?

Mr. Coleman: No, sir, no rails into either Cairo or Memphis.

Mr. Wright: And is obliged to operate into those points, if it does operate, over other lines?

505 Mr. Coleman: Yes, and there is a heavy terminal expense at either Cairo or Memphis, especially at Memphis. We use the Iron Mountain tracks from Fair Oaks, Arkansas, into Memphis.

Mr. Wright: How do you consider the present rates to Cairo? Do you consider them reasonable and remunerative rates?

Mr. Coleman: We consider that the present rates to Cairo are unreasonably low; that the rate to Cairo is used as the basis for through rates to points beyond, and the movement to Cairo proper via our line is very slight. I have not the figures, but there are very few cars move into Cairo proper over our line.

Mr. Wright: That is, you consider the rates to Cairo as basing rates practically?

Mr. Coleman: We consider them as basing rates, yes.

Mr. Wright: Have you any data or figures, or can you testify as to the amount of movement on the Cotton Belt road through Thebes or Cairo?

Mr. Coleman: No, I have no figures on that.

Mr. Wright: Can you state as to whether they have a considerable movement?

Mr. Coleman: That is, to Thebes?

Mr. Wright: Thebes or Cairo.

506 Mr. Coleman: Yes, there is a very heavy movement of lumber through Thebes. Nearly all lumber moving over the Cotton Belt to St. Louis or to any point east of the Mississippi river is through Thebes.

Mr. Wright: In fact, it is the largest lumber gateway on the Cotton Belt road, is it?

Mr. Coleman: It is practically. It is the largest and practically the only one that we have.

Mr. Wright: What have you to say as to the location of the Cotton Belt Railroad?

Mr. Coleman: The Cotton Belt is a strictly north and south line. We have no east and west line of our own. We operate into Memphis over the Iron Mountain rails, as I stated before, but aside from that it is strictly north and south.

Mr. Wright: And I believe you stated any movement into Paducah, for instance, from a point on the Cotton Belt road would be a three-line haul?

Mr. Coleman: Would be a three-line haul, the Cotton Belt to Thebes and the C. & E. I. and I. C. together to Cairo, and the I. C. beyond Cairo, would be three lines.

Mr. Wright: Have you anything further you wish to state—

507 Mr. Coleman: And would have to cross two rivers, that would be the Ohio and Mississippi.

Mr. Wright: (Continuing) — as to the reasonableness of the present rates? You stated that you considered that they were very low. Have you anything further?

Mr. Coleman: I have nothing further to say except that we consider the rates to Cairo very low.

Mr. Wright: I think that is all.

Cross examination.

Mr. Hines: How is Thebes located with respect to Cairo, on which side of the Mississippi river is it, and how far from Cairo?

Mr. Coleman: Thebes is on the east side of the Mississippi river and is about, via our route, about 29 miles north of Cairo.

Mr. Hines: Is there any point immediately opposite Thebes on the west side of the river?

Mr. Coleman: There is a point about three miles west called Elmo, Missouri.

Mr. Hines: How near to Cairo does your line come?

Mr. Coleman: We are practically almost directly opposite Cairo, but we have no transfer there and no way to transfer freight
508 across the river at that point, and all our Cairo business is handled via Thebes.

Mr. Hines: Is any charge made for crossing the Mississippi river, any specific charge that you have any knowledge of?

Mr. Coleman: At Thebes do you mean?

Mr. Hines: Yes.

Mr. Coleman: Yes, there is a charge there which is taken into consideration, I do not mean to say that it is added to the rate, but it is considered.

Mr. Hines: It is concealed in the rate, is it?

Mr. Coleman: It is not added to the rate.

Mr. Hines: That is all.

Mr. Wright: Mr. Coleman, generally the same rates apply to points just west of the Mississippi river as apply to Thebes?

Mr. Coleman: The same rate, yes, sir.

Mr. Wright: So there is no bridge arbitrary?

Mr. Coleman: No, there is no bridge arbitrary, the rate is the same to points west.

Mr. Callaway: You would collect it if you could, wouldn't you? You would like to add in a bridge arbitrary?

Mr. Coleman: Yes, sir.

(Witness excused.)

509 J. E. JOHANSON was called as a witness, and having been duly sworn, testified as follows:

Direct examination:

Mr. Humburg: Mr. Johanson, you are assistant general freight agent for the Rock Island Lines, with headquarters at Little Rock, Arkansas?

Mr. Johanson: Yes, sir.

Mr. Humburg: And I take it you are familiar with the rate adjustment involved in this proceeding?

Mr. Johanson: Yes, sir.

Mr. Humburg: I wish you would tell in a general way the amount of lumber that originates on your line and south of your line as described in the complainants' petition, being your line, I believe, from Memphis to Little Rock.

Mr. Johanson: There are different kinds of lumber originating at different points on our line.

Our line east of Little Rock is practically all what we call hard-

wood, which includes all of the hardwoods, also cottonwood and gum.

The territory west of Little Rock is mixed, is hardwood and pine.

South of Little Rock the principal tonnage is yellow pine,
510 but there is some hardwood.

Mr. Humburg: What is the general course and direction of your line in that territory, insofar as transportation from there to Cairo and Paducah, respectively, is concerned?

Mr. Johanson: Our line in Arkansas is essentially an east and west line, although a portion of our line runs due south from Little Rock into what is known as the yellow pine territory.

Mr. Humburg: Some reference has been made to Des Arc, Arkansas. Describe its general location on your line.

Mr. Johanson: Des Arc is located on our line about twenty miles north of Mesa or De Vall's Bluff, a point on our line about 88 miles west of Memphis. It is also located on the White River.

Mr. Humburg: So it is really north of the line described by the complainant in this petition, as to which it says the main supply of lumber comes from south of that line?

Mr. Johanson: Yes, sir.

Mr. Humburg: Describe the basis and the structure of your rates on lumber from your lumber producing territory to Cairo on the one hand, and to Paducah on the other.

Mr. Johanson: I think I can best explain that by introducing a map here as an exhibit, showing the location of our
511 line and the competitive features which we have to meet.

Mr. Humburg: That is a correct representation, is it?

Mr. Johanson: Yes, sir.

Mr. Humburg: We offer that in evidence as Johanson Exhibit
No. 1.

(The map, so offered and identified, was received in evidence and thereupon marked "Johanson Exhibit No. 1, received in evidence September 17, 1913," and is attached hereto.)

Mr. Humburg: Now proceed with your explanation of the rate structure and basis.

Mr. Johanson: Some explanation of this map is necessary, that is, to show the location of the Rock Island lines as compared with other lines. The Rock Island line is shown in red, its eastern terminus being Memphis, Tennessee. Competing lines of the Rock Island are shown in blue, being the Iron Mountain and the Cotton Belt roads, these roads having their eastern terminus at Memphis and Cairo and Thebes, that is, that is their river crossings.

The basis of rates from points on the Rock Island where we do not come in competition with the Iron Mountain and the Cotton

Belt, north and south roads, is the Memphis combination to
512 all territory on the south of the Ohio river, with one or two exceptions.

The first exception which I might mention is the rates fixed to Louisville and Cincinnati by the Interstate Commerce Commission from points south of Little Rock, which were fixed largely by reason

of rates carried by the south Louisiana lines to Vicksburg and New Orleans.

The only other exception is the rate to Cairo and Thebes, and such rates to points which might base on Cairo and Thebes, where such division is less than the combination on Memphis.

Now, the Rock Island comes in competition with the Iron Mountain and the Cotton Belt not only at the crossings of the blue and red lines as indicated, namely, Forest City, Brinkley, Newport, Little Rock, and Stuttgart in hardwood territory, and Benton, Haskell, Malvern, Hot Springs, Fordyce, Crossett, Eldorado and Alexandria in the yellow pine territory; but in the hardwood territory it also comes in competition with the Iron Mountain and the Cotton Belt by reason of the rivers.

Taking up the first, the St. Francis River, which is not designated specifically, but is marked, the river crossings with the railroads being Marked Tree on the 'Frisco, and Parkin on the Iron Mountain and Madison on the Rock Island, we have a very large mill at Madison, Arkansas, which draws all of its logs in the vicinity of Marked Tree. Necessarily the rate from Madison therefore is governed largely by the rate from Marked Tree and from Parkin.

We have several mills at Des Arc mentioned in this complaint, also at De Vall's Bluff. These mills draw their logs also out of the rivers, principally from the White River.

Mr. Humburg: That is the river which crosses and runs north and south near Des Arc, isn't it?

Mr. Johanson: Yes, sir, and its tributaries, the river crossings with the other railroads being Newport on the Iron Mountain, and Clarendon on the Cotton Belt. Clarendon is south of De Vall's Bluff and is not properly shown on the river, although it is actually on the river, so that our rates to Cairo are made as based on the rates carried by the Iron Mountain, Cotton Belt and the 'Frisco to meet the direct lines to Cairo and Thebes.

Mr. Humburg: Do any of the lines in that territory make rates to Cairo other than the combination on Memphis?

Mr. Johanson: Yes, I should say with the Iron Mountain and the Cotton Belt lines in that territory, our rates would be made on the full Memphis combination, not only to Paducah, but also Cairo and other points where we would handle lumber through Memphis.

As to yellow pine, there is no river competition for the movement of yellow pine in the territory we serve. I suppose that competition is with pine on the Iron Mountain and the Cotton Belt.

Mr. Humburg: The yellow pine produced on your railway is considerably south, as I understand you to say, of your line from Memphis to Little Rock?

Mr. Johanson: Yes, sir, it extends all the way from Little Rock to the Gulf of Mexico, but the largest tonnage is in the south end. Twenty-five per cent is in the vicinity of Lake Charles.

Mr. Humburg: And the normal basis which you have already described for Paducah is the combination on Memphis?

Mr. Johanson: Yes, sir.

Mr. Humburg: What is that rate from say Des Arc to Paducah on this combination?

Mr. Johanson: Nineteen cents.

Mr. Humburg: Is that the rate today?

Mr. Johanson: No, sir, that is the rate today via Memphis
515 in connection with the N. C. & St. L., but that is not the lowest rate.

Mr. Humburg: What is the lowest rate?

Mr. Johanson: The lowest rate is 17 cents except on gum lumber which is 16 cents.

Mr. Humburg: Then Paducah has something better than the straight combination by way of the Illinois Central?

Mr. Johanson: Yes, sir.

Mr. Humburg: In a measure, it receives the benefit, does it not, of the competition at Cairo?

Mr. Johanson: It does.

Mr. Humburg: So that the benefits given to Cairo are to that extent reflected on Paducah?

Mr. Johanson: Yes, sir.

Mr. Humburg: Does the 17 cent rate carry the traffic to Paducah, do you know?

Mr. Johanson: I have not made any personal investigation on that, but from the testimony given this morning I understand it does not, and the business is moved on a 19 cent rate via the N. C. & St. L.

Mr. Humburg: I wish you could submit such data as you have
516 upon the question of the reasonableness per se of the 17 cent rate to which your company is a party from your producing territory to Paducah. That is demonstrated by the exhibit to be marked Johanson Exhibit No. 2, prepared, I understand, by you?

Mr. Johanson: Yes, sir.

Mr. Humburg: And is it correct?

Mr. Johanson: Yes, sir.

Mr. Humburg: We offer it as such.

(The statement, so offered and identified, was received in evidence and thereupon marked "Johanson Exhibit No. 2, received in evidence September 17, 1913," and is attached hereto.)

Mr. Humburg: Now, Mr. Johanson, make such observations as you desire to make concerning your Exhibit No. 2.

Mr. Johanson: The exhibit is largely self-explanatory. It shows the lowest rates available from selected points, both in hardwood and the yellow pine territory reached by our line, to Paducah, the short line available distance, and the earnings per ton per mile, both by taking the gross rate and by taking the rate after deducting one cent per 100 pounds for the Memphis bridge toll. As compared with that we show the rates, earnings, distances and earnings per ton
517 per mile for corresponding distances in connection with rates fixed by the Interstate Commerce Commission in other cases, reference to the Interstate Commerce Commission's

report being shown in the last column; and it shows that the rates as now fixed to Paducah from the points mentioned compare very favorably with the rates fixed by the Interstate Commerce Commission for various distances.

Now, it is proper further to explain that in figuring these distances we have used the direct line of the Illinois Central from Memphis to Paducah.

Mr. Humburg: Have you any further data that you wish to submit upon the reasonableness of the rates to Paducah? If so, submit them now.

Mr. Johanson: I only have one more exhibit and that shows comparison of rates to Cairo versus Paducah compared with what it would be on the basis of the Memphis combination.

Mr. Humburg: That was also prepared by you and is correct?

Mr. Johanson: Yes, sir.

Mr. Humburg: We will offer it as Johanson Exhibit No. 3.

(The statement, so offered and identified, was received in evidence and thereupon marked "Johanson Exhibit No. 3, received in evidence September 17, 1913," and is attached hereto.)

Mr. Humburg: It explains itself very largely, does it?

518 Mr. Johanson: Yes, sir.

Mr. Humburg: Anything you want to say about it further?

Mr. Johanson: Nothing.

Mr. Humburg: Have you anything further to say on that subject?

Mr. Johanson: No, sir.

Mr. Humburg: Mr. Johanson, what if anything have you to say about the alleged unjust discriminatory nature of the rates on lumber from your producing territory to Paducah as compared with the rates to Cairo?

Mr. Johanson: While it is a fact as alleged in the complaint that the distance via the Rock Island in connection with its Cairo connection, the Illinois Central, is practically the same as it is to Cairo this discrimination so far as the Rock Island is concerned is due entirely to the fact that it is necessary for us to meet at Cairo the competition of the direct lines serving Cairo; in other words, having in mind the basis of our rates to this territory, which is the Memphis combination, we would either have to stay out of Cairo business and surrender that to the Iron Mountain and the Cotton Belt, or seek an outlet by some other line than the Iron Mountain and the Cotton

519 Belt into Cairo, in order to meet that competition. The only line that we can handle that business with is the Illinois Central from Memphis to Cairo. We have one other outlet to the C. F. A. territory which is shown on this map, Exhibit No. 1, in green, being the 'Frisco, by a bridge combination. These two routes, that is, the Rock Island in connection with the 'Frisco via Bridge Junction to Thebes, and the Rock Island in connection with the Illinois Central via Memphis to Cairo, enable us to compete with the direct Cairo-Thebes lines to Central Freight Association territory.

I will say further that our experience is the same as the other lines. Those figures that we have prepared indicate that less than one per cent of the business which we handle through Cairo and Thebes stops at those points; in other words, these rates are essentially basing rates for points beyond in Illinois and C. F. A. territory.

Mr. Humburg: You have heard the testimony of Messrs. Bryan and Rausch. Do you or do you not adopt their testimony insofar as it is applicable to the situation of your company?

Mr. Johanson: Yes, sir. We do not adopt all of the views that are expressed by the east side lines so far as their views are concerned, because from our territory we have competition at Cairo which we must meet in order to reach C. F. A. territory, which we do not have at Paducah.

Mr. Humburg: That means of course as to some phases your situation is slightly different?

Mr. Johanson: Our situation is slightly different to the east side in some respects.

Mr. Humburg: By reason of the location of your railroad?

Mr. Johanson: Yes, sir.

Mr. Humburg: And the producing territory on your road?

Mr. Johanson: Yes, sir.

Mr. Humburg: And the conclusion that you reach from all that you have stated is, I take it, that under the circumstances you have explained, no unjust discrimination in your judgment exists between the present difference in the rate from your territory to Cairo on the one hand and to Paducah on the other, is that correct?

Mr. Johanson: That is correct.

Mr. Humburg: Unless you have something further to say, I have finished.

Mr. Johanson: I have only one thing further that I might state and that is someone testified this morning that the natural route from the territory served by the Rock Island to Cairo is via the Illinois Central. On the contrary, the natural route is over the direct line of the Iron Mountain and the Cotton Belt.

I have one more exhibit that I overlooked.

Mr. Humburg: Yes, that may be marked Johanson Exhibit No. 4. It is correct?

Mr. Johanson: Yes, sir.

Mr. Humburg: We offer it.

(The statement, so offered and identified, was received in evidence and thereupon marked "Johanson Exhibit No. 4, received in evidence September 17, 1913," and is attached hereto.)

Mr. Humburg: Tell briefly what this exhibit shows and what it is intended to prove.

Mr. Johanson: This exhibit shows a comparison of the rates from selected points in Arkansas and Louisiana reached by the C. R. I. & P., and the distances and the per ton mile earnings to Paducah as compared with rates and per ton per mile earnings from corresponding points on the Iron Mountain for corresponding distances to St.

Louis; the rates used being those which were approved by the Interstate Commerce Commission in the Lumbermen's Exchange of St. Louis, 24 I. C. C. 220. It shows that the rates to Paducah—and here again we have used the short line available mileage from the points indicated—are very favorable as compared with the rates approved by the Interstate Commerce Commission to St. Louis for corresponding distances. It is a fact that the rates to Paducah are higher uniformly than the rates to St. Louis for the distances indicated; but it must be borne in mind that the rates to St. Louis are over one line, whereas the rates to Paducah are in all cases a two-line haul and involve the crossing of the Mississippi River. I should say that only one cent for the Mississippi River and two cents differential for the two-line haul rates are apparently correct and that the rates are on a correct basis to Paducah.

Mr. Humburg: That is all.

Cross-examination.

Mr. Norman: On a shipment moving from Des Arc to Cairo, what is the route by which it would move?

Mr. Johanson: Via the C. R. I. & P. to Memphis, and the Illinois Central. That is the only available route.

Mr. Norman: I thought you said just a few moments ago that the natural route would not be that way?

523 Mr. Johanson: The natural route from the territory we serve is the direct lines of the Iron Mountain and the Cotton Belt, it being borne in mind that the logs from which the lumber is manufactured at Des Arc do not come from Des Arc. Naturally the rate which we make from Des Arc is based upon the rate applicable from points reached by the Iron Mountain and the Cotton Belt crossing the same river.

Mr. Norman: Do I understand then that while the short route would be via the Iron Mountain or the St. Louis & San Francisco, that that short route is not available to you, and that the available route is through Memphis and via the Illinois Central, is that correct?

Mr. Johanson: The only available route on the manufactured lumber is via Memphis and via the Illinois Central; but if we did not meet that rate, that rate would not be used, for the reason that the lumber would not be manufactured at Des Arc, but would be manufactured at the crossings of that river by the other roads.

Mr. Norman: But as a matter of fact, shipments actually move from points on your line of lumber that are going to Cairo via Memphis and the I. C. Railroad?

Mr. Johanson: Yes, sir.

524 Mr. Norman: Now, how does the rate from Des Arc to Cairo and the rate from Des Arc to Paducah divide as between the Rock Island and the Illinois Central?

Mr. Johanson: I don't believe I could say off-hand without having the division sheets before me.

Mr. Norman: Does the Rock Island get any more when the lumber is destined to Paducah than it does when it is destined to Cairo?

Mr. Johanson: I could not say without referring to the division sheet. You understand we have no through joint rate to Paducah, and the rate we have makes on the Memphis or the Cairo combination as the case might be.

Mr. Norman: Aren't there through rates published on traffic from Des Arc and other stations on your line to Paducah?

Mr. Johanson: No, sir.

Mr. Norman: No through rates?

Mr. Johanson: No, sir, no joint rates published.

Mr. Norman: Made on combination?

Mr. Johanson: Yes, sir.

Mr. Norman: Well, I understood you to say that it was less than the Memphis combination?

Mr. Johanson: It is, the Cairo combination is less than the
525 Memphis combination from most of the points. There are a few points—I ought to correct that statement—there are a few points in the vicinity of Memphis, nearby Memphis, where the rate does make by the Memphis combination lower than the Cairo combination, but those are very restricted territory.

Mr. Norman: Then you not having any joint rates, the I. C. Railroad as a matter of fact gets that entire two cents excess in the rate to Paducah over the rate to Cairo?

Mr. Johanson: I don't know of any two cent excess, I don't know what you refer to.

Mr. Norman: I mean 6 cents. Six cents I will put it, when the lowest combination is via Cairo.

Mr. Johanson: I don't know whether they do or not. I would have to refer to our division sheet to see.

Mr. Norman: When the lowest combination is via Cairo, the traffic does not actually move by the route by which the rate is made?

Mr. Johanson: It does.

Mr. Norman: Do you mean the I. C. takes the business up to Cairo and over to Paducah?

Mr. Johanson: I don't know how they take it. You would have to ask the Illinois Central about that.

Mr. Rausch: They don't have to take it that way. Rule 5
526 of the Commission's tariff circular 18-A provides for that.

Mr. Johanson: I will say this in answer to your question, Mr. Norman, that I don't think the Rock Island should be required to accept the same revenue on business to Paducah as on business to Cairo.

Mr. Norman: But as a matter of fact, as it now appears, you do accept the same revenue?

Mr. Johanson: I am not sure that we do. On the other hand, I think we do not.

Mr. Norman: But if the rate makes by combination, all you get is your rate up to Memphis, isn't it?

Mr. Johanson: That is what I said I could not answer without reference to my division sheet. So far as I know on lumber that is moving from Des Arc to Paducah, we are earning our through local rate to Memphis.

Mr. Norman: Will you collect that information and let the Commission have it, so that there may not be any inference about it? Will you make up a statement and file the statement with the Commission, furnishing us a copy, showing just how and to what extent you participate in the revenue derived from the movement to Cairo and movement to Paducah?

527 Mr. Johanson: I don't think that I should be required to do that, but if the Commission should require it I presume that we will. I do not consider that we should accept the same revenue on business to Paducah as to Cairo, and if we do, I would not consider that that was necessarily correct or proper. Of course our record is the only thing will show what we are earning on that business.

Mr. Humburg: There is no desire, if your Honor please, on our part to be captious in these matters here, but it does seem that this question of divisions between carriers is one about which the Commission has repeatedly stated it is a matter of bargain between them, and it is really not material to the issues in this case.

Mr. Hines: The Commission has also said that they throw much light upon the reasonableness of the total rate.

Mr. Callaway: Where have they ever said that, can you recall?

Mr. Hines: That is the Jacobs & Abbott case. I don't remember the exact volume of the report, but I think I can refer you to it by letter.

Mr. Callaway: I would be glad if you would because I have always held the contrary view of it.

528 Mr. Norman: Furthermore, if the Examiner please, in this particular matter, it being contended here that they have to meet this competition east of the river in the rate to Cairo, and if it should appear that as a matter of fact the I. C. Railroad is getting all that excess to Paducah over Cairo, it seems to me that they are meeting this competition over there both east and west.

Mr. Johanson: Pardon me, I did not say we met any competition east of the river.

Mr. Callaway: In order that it may not seem there is any hesitancy in furnishing it, the Illinois Central Railroad will be very glad to furnish it. We don't think it is material to the question, but we will settle the question of those divisions.

Mr. Humburg: We have nothing to hide anywhere, but we simply desire not to encumber the record with a lot of stuff that is not material.

Mr. Hines: We have not suggested that you want to hide anything. We think it is very material.

Examiner Esch: Are there any further questions to be asked of this witness?

529 Mr. Callaway: Why do you think that your line would be authorized to get a greater division to Paducah than they do to Cairo that you speak of?

Mr. Johanson: For the reason, as I said, that the basis for all rates to all Ohio River crossings from points south of Fulton are on the full combination of rates and there is no reason why we should

not have our full amount of nine cents per 100 pounds from Des Arc, Arkansas, on all business going to the southeast or to Ohio river crossings, except where we are forced to meet the competition of the Iron Mountain and the Cotton Belt lines to Cairo and Thebes.

Mr. Callaway: If you can get some line that will give you a division that will represent a reasonable haul, whether you get the long haul or not, it is a matter of bargaining with you whether to take the business on that rate, or to refuse your consent?

Mr. Johanson: Yes, the Rock Island in connection with the Illinois Central are forced to haul this business to Cairo at a lower rate than we would ordinarily haul it, and it is a question of making a bargain between ourselves as to what we would haul it for.

Mr. Callaway: Or give it to some other railroad?

Mr. Johanson: Whether we shall take it or surrender it to
530 the Cotton Belt or the Iron Mountain.

Mr. Callaway: Whatever the division is now or whatever it has been, it has had no effect, has it or has it not, on the aggregate rate which was paid by the shipper?

Mr. Johanson: No, sir, the rate was fixed by the other lines and we had to meet it or stay out.

Mr. Humburg: Divisions are not fixed like rates. They are subject to change from time to time between carriers, aren't they?

Mr. Johanson: That is correct.

Mr. Humburg: Volume of traffic has something to do with it?

Mr. Johanson: Yes, sir.

Mr. Humburg: Eastbound or westbound, at interchange of traffic?

Mr. Johanson: Yes, sir.

Mr. Humburg: There are a great many things that determine the volume of a division on one commodity as against the volume of the division on another commodity?

Mr. Johanson: Yes, sir.

Mr. Callaway: If your line and the Illinois Central did
531 not touch that traffic, the Paducah people would pay the same rate?

Mr. Johanson: Yes, sir.

Mr. Callaway: We have nothing further, I believe. That closes the case for the defendants.

(Witness excused.)

Mr. Norman: We have nothing more.

Examiner Esch: Do you desire to file briefs in this case?

Mr. Callaway: Yes.

Examiner Esch: The time for filing briefs will be set for the twentieth of October for the complainant, the tenth of November for the defendants, and the twentieth of November for the reply brief.

Is oral argument desired?

(No response.)

Whereupon, at 4:50 o'clock p. m., on the Seventeenth day of September, 1913, the hearing of the above-entitled matter was closed.

- 532 *Motion for a Reconsideration filed by the St. Louis & Southwestern Railway Co., St. Louis, Iron Mountain & Southern Railway Co., and The Chicago, Rock Island & Pacific Railway Co., before the Interstate Commerce Commission, and the Order Overruling Same; Read on Hearing and Referred to in the Order of Submission is as follows:*

(EXHIBIT C.)

Interstate Commerce Commission, Washington.

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the attached are true copies of Motion for Reconsideration filed by St. Louis Southwestern Railway Company, St. Louis, Iron Mountain & Southern Railway Company, and The Chicago, Rock Island & Pacific Railway Company, and of order of the Commission entered March 3, 1916, in case No. 7736, Paducah Board of Trade against Illinois Central Railroad Company and others, the originals of which are now on file and of record in the office of this Commission.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the Commission, this 24th day of March, 1916.

[Interstate Commerce Commission, 1887.]

GEORGE B. MCGINTY,
*Secretary of the Interstate
Commerce Commission.*

533

Order.

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 3rd day of March, A. D. 1916.

No. 7736.

PADUCAH BOARD OF TRADE

v.

ILLINOIS CENTRAL RAILROAD COMPANY et al.

Upon consideration of the record in the above-entitled proceeding, and of petition for rehearing filed by defendants:

It is ordered, that said petition be, and it is hereby, denied.

By the Commission:

[SEAL.]

GEORGE B. MCGINTY,
Secretary.

534 Before the Interstate Commerce Commission.

I. C. C. Docket, No. 7736.

PADUCAH BOARD OF TRADE

v.

ILLINOIS CENTRAL RAILROAD COMPANY et al.

Motion for Reconsideration.

Now come respondents, St. Louis Southwestern Railway Company; St. Louis, Iron Mountain & Southern Railway Company, and The Chicago, Rock Island & Pacific Railway Company, and respectfully pray that the Commission reconsider its decision in the above entitled cause, and as grounds therefor state:

I.

The Commission erred in establishing joint rates less than the present combination rates in the absence of a finding that the present combination rates are unreasonably high.

II.

The Commission erred in finding (if they did so find) that the present combination rates to Paducah are unreasonably high, because there was no evidence before it to sustain such finding.

III.

The Commission erred in finding that "the present rates to Paducah are unjustly discriminatory and give an undue preference to Cairo," in, that

(a.) The Commission failed to consider the dissimilarity in conditions under which freight is transported and rates made to Cairo and Paducah respectively.

535 (b.) There was no evidence before the Commission to sustain a finding that the present combination rates make or give any undue or unreasonable preference or advantage to Cairo.

IV.

The order of the Commission is not responsive to the prayer of the complaint.

V.

The prayer of the complaint being for through routes and joint rates via Memphis, the Commission is without jurisdiction to establish through routes and joint rates via Cairo in this proceeding.

VI.

The Commission is without jurisdiction to establish through routes and joint rates via Memphis in the absence of a finding that the routes via Cairo are unreasonably long.

VII.

The order of the Commission establishing through routes via Memphis is void, because the carriers, parties to the through route beyond Memphis, have not been designated.

VIII.

The Commission erred in taking into consideration the constructive mileage of the Cairo bridge, because there was no evidence in this case bearing on that question.

IX.

The Commission erred in considering the constructive mileage of the Cairo bridge in determining the reasonableness of the routes via Cairo.

X.

The Commission recognizes in its opinion that the Rock Island is forced by competitive conditions to meet the Cairo rate of the other carriers, but, nevertheless, fails to give that fact consideration.

XI.

The Commission erred in finding that the present Cairo rate would be a reasonable rate to apply to the transportation of lumber and logs to Paducah.

XII.

There was no evidence before the Commission from which it could find that the present Cairo rate would be a reasonable rate to apply to the transportation of lumber and logs to Paducah.

XXIII.

The Commission holds that to disregard everything but distance is obviously improper—yet its decision is based upon distance alone, and disregards the competitive conditions existing at Cairo.

XIV.

The Commission erred in establishing through routes in this case via either Memphis or Cairo, there being no evidence before it justifying such an order.

XV.

The order of the Commission amounts to confiscation.

Wherefore, these respondents respectfully pray the Commission to reconsider its decision in this case, and during the pendency of this motion stay the enforcement of its order of date January 21, 1916, which, by its terms, becomes effective on or before March 20, 1916.

Respectfully submitted,

537

EDW. A. HAID,
A. L. BURFORD,
*Attorneys for St. Louis South-
western Railway Company;*
H. G. HERBEL,
F. G. WRIGHT,
*Attorneys for St. Louis, Iron Moun-
tain & Southern Railway Company;*
W. F. DICKINSON,
*Attorney for The Chicago, Rock
Island & Pacific Railway Company.*

538

An- on another day of said Term, to-wit, March 27th, 1916, the following Order of Submission was entered:

Court Met.

Present:

Honorable John W. Warrington, Judge United States Circuit Court of Appeals, Sixth Judicial Circuit.

Honorable Walter Evans, United States District Judge, Western District of Kentucky.

Honorable Howard C. Hollister, United States District Judge, Southern District of Ohio.

In Equity. No. 33.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, ST. LOUIS, IRON Mountain & Southern Railway, The Chicago, Rock Island & Pacific Railway, Petitioners, and Louisiana & Arkansas Railway, Intervening Petitioner,

vs.

UNITED STATES OF AMERICA, Respondent, and INTERSTATE COMMERCE COMMISSION, Intervening Respondent.

On this day this cause came on for hearing on the petition for injunction filed herein before the Honorable John W. Warrington, United States Circuit Judge, Sixth Judicial Circuit; the Honorable Walter Evans, United States District Judge, Western District of Kentucky, and the Honorable Howard C. Hollister, United States District Judge, Southern District of Ohio, who convened the United

States District Court, Western District of Kentucky, in pursuance of the Statute in such case made and provided.

539 And thereupon came the parties, and each of them, by their respective counsel in open court, due notice having been given; and thereupon the United States of America filed its motion to dismiss the petition herein, and the Interstate Commerce Commission filed its motion to dismiss the petition herein, and also its answer to the petition; the Louisiana & Arkansas Railway Company tendered an intervening petition herein, to the filing of which there was no objection, and it is ordered that said intervening petition be now filed, on condition that the motions to dismiss the original petitions heretofore entered shall apply to the intervening petition of the Louisiana & Arkansas Railway Company.

And thereupon on said hearing the petitioner read—

- (1) The petition for an injunction, and exhibit;
- (2) The notice of hearing and the order fixing the hearing;
- (3) A copy of the complaint filed by the Paducah Board of Trade with the Interstate Commerce Commission;
- (4) A certified copy of the evidence before the Interstate Commerce Commission;

(5) A certified copy of the motion for a reconsideration of the case before the Interstate Commerce Commission and the order overruling said motion;

(6) The intervening petition of the Louisiana & Arkansas Railway Company;

And thereupon the respondents read—

- (1) The motion of the United States to dismiss the petition;
- (2) The motion of the Interstate Commerce Commission to dismiss the petition and the answer of the Interstate Commerce Commission;
- (3) The two exhibits referred to in the answer of the Interstate Commerce Commission, being,

(1) Report in Interstate Commerce Commission Docket No. 7736 and the order attached thereto; and,

540 (2) Report in Interstate Commerce Commission Docket No. 520, and the order attached thereto.

And thereupon the said petition for an injunction, the said objections and the said cause were argued by counsel and submitted to the Court and taken under advisement.

March 27th, 1916.

WALTER EVANS, *Judge*.

541 And on another day of said Term, to-wit, May 13th, 1916, the following Opinion of the Court was delivered and filed.

District Court of the United States, Western District of Kentucky.

In Equity. No. 33.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, ST. LOUIS, IRON Mountain & Southern Railway Company, and The Chicago, Rock Island & Pacific Railway Company, Petitioners, and Louisiana & Arkansas Railway Company, Intervening Petitioner,

vs.

UNITED STATES OF AMERICA, Respondent, and INTERSTATE COMMERCE COMMISSION, Intervening Respondent.

Before Warrington, Circuit Judge; and Evans and Hollister, District Judges.

Per Curiam:

Petition by St. Louis Southwestern Railway Company ("Cotton Belt"), St. Louis, Iron Mountain & Southern Railway Company ("Iron Mountain"), The Chicago, Rock Island & Pacific Railway Company ("Rock Island"), and intervening petition by Louisiana & Arkansas Railway against the United States of America, respondent, and Interstate Commerce Commission, intervening respondent, for an injunction.

Motions of United States of America, respondent, and of Interstate Commerce Commission, to dismiss the petition.

542 The controversy relates to through routes and joint freight rates on yellow pine and lumber in carload lots to Cairo, Ill., and Paducah, Ky., originating from the territory in Louisiana and Arkansas, bounded on the north by the line of the Rock Island from Memphis, Tenn., to Little Rock, Ark., including Des Arc, Ark.; on the east by the Mississippi River; on the south by the Gulf of Mexico, and on the west by a line drawn through Kansas City, Mo., and Houston, Tex., embracing a tract about 400 miles long by 300 miles wide.

The petitioners operate west of the Mississippi River. The Cotton Belt and Iron Mountain extend far into the territory described, each having its own rails to Bird's Point on the Mississippi opposite Cairo. The Rock Island, extending far into this territory, may send its lumber to Cairo and to Paducah by the Iron Mountain or the Cotton Belt west of the river, or by delivery at Memphis to the Illinois Central, or the Nashville, Chattanooga & St. Louis Railway.

There is no bridge or other present method of crossing the Mississippi at Cairo, and the lumber is hauled across the river at Thebes, some thirty miles northwest of Cairo, thence to Cairo by the Iron Mountain over its own line, and by the Cotton Belt over the Chicago & Eastern Illinois, or Illinois Central, with which roads it has trackage agreements. The Louisiana & Arkansas Railway operates its own lines far within the lumber territory in which it crosses the lines of the other petitioners and connects with them for this traffic. The Iron Mountain and Rock Island have their own lines to Memphis. From Memphis and east of the Mississippi, the line of the Illinois Cen-

tral runs to both Cairo and Paducah, and Memphis and Paducah are also connected by the line of the Nashville, Chattanooga & St. Louis. It appears, therefore, that the lines of none of the petitioners reach Paducah, whether the lumber is routed via Cairo or via Memphis. The Paducah rates are combination—not through joint-rates.

543 Production of yellow pine in this territory is a comparatively modern development, the railroads gradually extending their lines southwardly as the northern market for it developed, and in the beginning established low rates to assist in overcoming the then prejudice against southern pine. When the production was extended south of the Arkansas River, the rate to Thebes and Cairo from that territory was made 13 cents per 100 pounds, and was by the railroads themselves made a blanket rate covering the entire territory at that time exploited. As further production extended southwardly, the railroads built further into the territory, but the same blanket rate existed until 1899, when the Cairo rate was increased to 14 cents, and in 1903, to 16 cents, at which figure the rate remained up to the time of the institution of the proceedings involved in this controversy.

This increase of 2 cents was attacked by producers as unreasonable and unjustly discriminatory, but was sustained by the Commission (May 4, 1909,) because the evidence did not warrant a disturbance of the blanket adjustment, and because transportation conditions West of the Mississippi were sufficiently different from those East to warrant higher rates from the Southwest than from the pine districts extending through the Southern tier of States from the Mississippi River to Florida. (16 I. C. C. R., 323.) The Cairo rate was again attacked (33 I. C. C. R., 33), but the Commission found (January 12, 1915), that neither the existing blanket arrangement nor the rates were shown to be unreasonable or unjustly discriminatory. Thereafter, upon the filing and suspension of tariffs by these petitioners and others proposing to increase the rates on lumber from all southern points to the Ohio River crossings and other points, the petitioners, seeking an increase from 16 cents to 17 cents from the Southwestern blanket to Cairo, the Commission, in an elaborate opinion by McChord, Chairman, reviewing the history of the development of the yellow pine production in the entire southern territory, and the

544 rates on the same, both East and West of the Mississippi River, found that the proposed increase on yellow pine to Cairo was not shown to be reasonable, and the 16-cent rate not shown to be unremunerative. (Investigation and Suspension Docket #520, decided July 12, 1915; 34 I. C. C. R., 652).

While in these cases the Commission recognized the competitive character of the Cairo rate, yet when they were determining the application of these very railroads to increase the rate, they, with all the facts before them, and dealing with an intricate situation, could see no justification for making the increase. The problem before them in that application directly concerned rate-making, and their duty was peculiarly administrative in character. *Loomis v. Lehigh Valley R. Co.*, 240 U. S., 43, 50. The fixing of rates was in the exercise of one of their especial functions; and when they expressed the

opinion, as they did, that the Cairo rate was not unduly low, all the presumptions are in favor of their finding. *Interstate Com. Comm. v. Illinois Central R. R. Co.*, 215 U. S., 452, 470; *id.* 479, 480, 481; *Interstate Com. Comm. v. Chicago, Rock Island & Pac. Ry. Co.*, 218 U. S., 88, 110. It may, for present purposes, be assumed that the 16-cent rate to Cairo was reasonable for the service performed.

The rate to Paducah via Cairo is 22 cents, and is made by adding to the Cairo rate the local rate, 6 cents, charged by the Illinois Central for its haul of 42 miles. There was evidence tending to show that this was reasonable for the service rendered, and nothing appears to the contrary. It may be conceded, for it is the law (*United States v. L. & N. R. R. Co.*, 227 U. S., 88, and *A. T. & S. F. R. R. Co. v. United States*, 232 U. S., 199), that the Commission cannot condemn a rate without a finding to that effect on substantial evidence; and, if there were no other route to Paducah except through Cairo, it is quite sure the Commission could make no order in any way depriving the petitioners of their reasonable rate to Cairo. But the Commission was also dealing in this case, as will appear, with the route to Paducah via Memphis, which, in its opinion, based on substantial evidence, was the more natural, and, hence, the logical route to Paducah.

545 The Paducah Board of Trade (June 28, 1913), filed a petition with the Commission against the petitioners and many other railroads West and East of the Mississippi participating in the lumber traffic from the southern hardwood and yellow pine district, alleging the injustice, unreasonableness and unduly discriminatory character of the rates from the Southwestern blanket as against Paducah, to the undue preference and advantage of Cairo. Thereupon, the Commission found (March 3, 1914, 29 I. C. C. R., 583, 592), the charge true and required the petitioners "to maintain rates to Paducah from substantially equidistant points or groups in Arkansas and Louisiana west of the river, on, and south of the line of the Chicago, Rock Island & Pacific from Memphis to Little Rock, no higher than those contemporaneously maintained from the same points to Cairo." Since the petition did not contain a specific request for the establishment of through routes and joint rates, the Commission found itself without power to make an order in that behalf, (29 I. C. C. R., 592), and the railroad companies, including these petitioners, the Illinois Central and the Nashville, Chattanooga & St. Louis, ignored the Commission's expectation, that they would revise their tariffs by May 1, 1914, in accordance with the Commission's views. Thereafter, February 15, 1915, the Paducah Board of Trade filed a second petition against the petitioners and others, including the Illinois Central and the Nashville, Chattanooga & St. Louis, in which it was truly alleged, in substance, that—

"Paducah, Ky. is on the south bank of the Ohio River and is a jobbing and manufacturing city, and does a large business in buying, selling, rehandling and manufacturing lumber and lumber commodities, and is a large shipper of lumber and lumber commodities made from hardwood lumbers, pine and cottonwood and gum. That the principal competitors of the lumber merchants and manufac-

turers of Paducah are located at Cairo, Ill., a city located on the north bank of the Ohio River about 40 miles from Paducah, and that both Cairo and Paducah obtain a large part of their supply of lumber from the producing territory west of the Mississippi River in the States of Louisiana and Arkansas, and that the rates maintained by the defendants on lumber and lumber commodities from said territory to Paducah, Ky. are from 2 to 6 cents higher than the rates contemporaneously maintained by defendants to Cairo, Ill."

It was charged that the rates maintained by the defendants "on logs and lumber in carloads to Paducah from producing points in Louisiana and Arkansas, on and south of The Chicago, Rock Island & Pacific Railway from Memphis, Tenn., to Little Rock, Ark., and including Des Arc, Ark., are unjust, unreasonable and discriminatory, and give to Cairo, Ill., an undue preference and advantage and subject Paducah, Ky., to an undue prejudice and disadvantage: that the route from said producing points to Paducah, Ky., via Cairo, Ill., is unduly long as compared with the route from said producing points to Paducah via Memphis, Tenn., and that through routes and joint rates should be established from said producing points to Paducah, Ky., via Memphis, Tenn., and joint rates should be established via said route which do not exceed the rates contemporaneously maintained from said producing points to Cairo, Ill." The prayer was for the establishment of "through routes and joint rates for shipments of logs and lumber to Paducah, Ky., "from the points named" via Memphis, Tenn., with joint rates via said routes which shall not exceed the rates contemporaneously charged for the transportation of logs and lumber from the same points to Cairo, Ill."

The Cairo Association of Commerce intervened in the interests of Cairo, but does not join in the petition in this action.

On the evidence, including the evidence on the first petition, and upon a full hearing, the Commission filed its report in writing (37 I. C. C. R., 719, 725), and found "that the defendants unduly discriminate against Paducah to the undue preference and advantage of Cairo by the maintenance of their present rates on logs and lumber from the producing points here involved. * * * the rates on logs and lumber to Paducah from points of origin in the territory involved are unreasonable to the extent that they exceed the present rates to Cairo." And, further, "that the defendant should establish through routes to Paducah" from the territory involved, "and joint rates applicable via such routes no higher than the rates at present maintained from the same points or group to Cairo. These through routes and joint rates may be established via either Memphis or Cairo. An order was made, effective March 20, 1916, requiring defendants, in so far as they participate in the traffic, to cease and desist from publishing, demanding, or collecting their present rates for the transportation of logs and lumber to Paducah, Ky., from the points or groups named, and ordered them to establish and maintain "through routes * * * via Cairo, Ill. or Memphis, Tenn., to Paducah, Ky." from the territory involved "and to establish and maintain joint rates to Paducah, Ky., appli

cable via such through routes, not in excess of the rates at present in effect from the same points or groups to Cairo, Ill."

The effective date of this order was extended by the Commission to June 1, 1916.

March 14, 1916, petitioners filed their petition in this court against the United States, praying that the order of the Commission be enjoined and set aside, and for a "temporary" injunction, which we interpret to mean the "interlocutory" injunction contemplated by the Statute (38 Stat. at L., pt. 1, p. 220).

March 17, 1916, the United States filed a motion to dismiss and the Commission filed its answer as intervening respondent, moving also to dismiss. The Illinois Central and Nashville, Chattanooga & St. Louis were parties to all of the proceedings, and, not having joined in this application for relief against the order, presumably intend to comply with it.

The petitioners contend that the rates prescribed are unreasonably low, and, in effect, confiscatory, and the order void for the reasons—

(1) The Commission by its order attempts to establish
548 joint rates less in amount than the present combination of rates, although it has not found the present combination of rates to be unreasonably high.

(2) There was no evidence before the Interstate Commerce Commission from which it could find the present combination of rates to be unreasonably high.

(3) In determining whether "the present rates to Paducah are unjustly discriminatory and give an undue preference to Cairo," the Commission failed to consider the dissimilarity of conditions under which freight is transported and rates made to Cairo and Paducah respectively.

(4) There was no evidence before the Commission to sustain a finding that the present combination of rates makes or gives an undue or unreasonable preference or advantage to Cairo.

(5) The Commission is without authority to find petitioners guilty of discriminating against a point which they do not serve with their own rails, and to which they publish no joint through rates.

(6) Said order of the Commission is not responsive to the prayer of the complaint.

(7) The prayer of the complaint being for the establishment of through routes and joint rates via Memphis, the Commission was without jurisdiction to enter an alternative order, as it attempted to do.

(8) The Commission is without jurisdiction to establish through routes and joint rates over the lines of petitioners, St. Louis Southwestern Railway Company, and St. Louis, Iron Mountain & Southern Railway, via Memphis, in the absence of a finding that the routes via
Cairo are unreasonably long.

549 (9) There was no evidence before the Commission from which it could find that the routes over the lines of petitioners, St. Louis Southwestern Railway Company or St. Louis, Iron Mountain & Southern Railway via Cairo are unreasonably long.

(10) The Commission has not designated the carrier to the through routes ordered by it, between Memphis and Paducah.

(11) The Commission is without authority to order through routes via all lines operating between Memphis and Paducah.

(12) There was no evidence before the Commission bearing upon the constructive mileage of the bridge at Cairo.

(13) The Commission is without authority to take into consideration the constructive mileage of a bridge in determining the reasonableness of a route.

(14) There was no evidence to support the finding of the Commission, that the present Cairo rate would be a reasonable rate for the transportation of lumber and logs to Paducah.

(15) There was no evidence before the Commission justifying the establishment of through routes and point rates.

(16) The order of the Commission amounts to confiscation, and is, therefore, in violation of the Fifth Amendment to the Constitution of the United States.

At the threshold it may be said that the scope of our inquiry is exceedingly limited, and involves only the ultimate question as to whether the Commission, in the order complained of, acted within its power. Whatever view the Court might entertain upon it, upon the expediency or wisdom of the order, is not material.

550 The Court cannot interfere with the rates fixed, or practically established, by the Commission, unless it is made plainly appear that the orders are void, as violative of the Constitution, wanting in conformity to statutory authority, or has been arbitrarily exercised; and the duty of the Court is to determine the sole question. Whether or not the order of the particular case is based upon substantial evidence, heard and considered by the Commission. In *Com. Comm. v. Union Pacific R. R.*, 222 U. S., 541, 547; *Procter & Gamble v. United States*, 225 U. S., 282, 297, 298; *Mitchell Co. v. Pennsylvania R. R. Co.*, 230 U. S., 247, 257; *A. T. & S. R. Co. v. United States*, 232 U. S., 199, 221; *United States v. L. & N. R. Co.*, 235 U. S., 314, 320; *L. & N. R. Co. v. United States*, 237 U. S., 571, 579, 580.

The Commission has power to deal with acts made unlawful by Section 3 of the Act to regulate commerce, revised to September 1912, which provides:

"It shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

Complaint was made by Paducah Board of Trade in its first petition for alleged infractions of this section; and in its second it invoked also the power granted the Commission by Section 15, which among other things, provides:

"The Commission may also, after hearing, on a complaint

upon its own initiative without complaint, establish through routes and joint classifications, and may establish joint rates as the maximum to be charged and may prescribe the division of such rates as hereinbefore provided, and the terms and conditions under which such through routes shall be operated, whenever the carriers themselves shall have refused or neglected to establish voluntarily such through routes or joint classifications or joint rates; * * *

"And in establishing such through route, the Commission shall not require any company, without its consent, to embrace in such route substantially less than the entire length of its railroad and of any intermediate railroad operated in conjunction and under a common management or control therewith which lies between the termini of such proposed through route, unless to do so would make such through route unreasonably long as compared with another practicable through route which would otherwise be established."

Cairo, Ill., of about 17,000 inhabitants, lies at the confluence of the Mississippi River and the Ohio River. The lumber traffic from the South converges on Cairo, which is one of the Ohio River gateways for southern lumber to the northern market. Served, as it is, by the Cotton Belt and Iron Mountain by their own lines, the lumber hauled by those roads naturally goes to Cairo via Thebes. To that point the local rate was charged; from thence the rate to the market is local, so that lumber destined for Paducah pays the Cairo rate plus the Illinois Central local rate to Paducah. The Paducah rate is not a joint rate, but is a proportional rate.

Since the Cotton Belt does not go to Memphis on its own line, as the Rock Island and Iron Mountain do, it appears that rates are made by the Illinois Central on lumber from those roads to Cairo and to Paducah highly discriminatory against Paducah (22 cents, and in some instances 24 cents), for which, apparently, there is no reason, except the power of the Illinois Central to compel them. Naturally, since, on the west side of the river the roads haul to Cairo via Thebes for 16 cents, the Illinois Central would, as it does, exact no greater amount via Memphis than would make the Cairo rate equal to that rate established on the west side of the river. Thus, the rates to Paducah are made on the basis of the Cairo combination, although, in some instances, the rate via Memphis to Paducah is even greater than the Paducah rate via Cairo. The Rock Island's long haul is to Memphis, reaching Cairo by the Illinois Central. All of its rates are made on the Memphis combination, with the exception of its Cairo rate. The distance from Memphis via Illinois Central to Paducah and Cairo is about the same 169 miles.

What the division between the Rock Island and the Illinois Central is on Cairo traffic does not appear. The representative of the Rock Island had no objection to furnish the information to the Commission, but did not care to give it to the public. The point of this is, and the evidence shows, that, although the distance from Memphis to Paducah is the same as to Cairo, and the Illinois Central serves both localities, the rate to Paducah via Memphis is from 2 to 6 cents higher than the rate to Cairo by any of the roads.

The Nashville, Chattanooga & St. Louis reaches Paducah on its own line, and Cairo by connections with the Illinois Central. Its line is much longer than the Illinois Central's line to Paducah, and yet, in competition with the Illinois Central, it would not receive a greater rate from traffic via Memphis. The result is, that the Rock Island and the Iron Mountain and the Louisiana & Arkansas, shipping via Memphis for Paducah, would receive, on division with the Illinois Central or the Nashville, Chattanooga & St. Louis, presumably some parts of the excess of the Paducah over the Cairo rate. This would be true, also, of the Cotton Belt (if it shipped that way).

The Rock Island's most available route to Paducah is via Memphis, and we see no reason why it and the Louisiana & Arkansas, located as it is at the heart of the territory, could not, at least as well, ship to Paducah via Memphis as via Cairo. Two or more lines would have to be used in any event.

Paducah, with a population of about 25,000, is as well located relative to the northern market for yellow pine as is Cairo, both having important connections with the market, North, Northeast and Northwest, and it is nearer the great Northeastern market. Paducah lies rather better than Cairo, being on higher ground, since a part, at least, of the manufacturing district at Cairo, is subject to overflow in times of high water. Lumber from the South-

553 western blanket to Paducah via Cairo must cross both the Mississippi and the Ohio, while lumber from the same territory to Paducah via Memphis, crosses the Mississippi only. The Cairo bridge was an expensive structure, and, while there was no evidence how large an arbitrary mileage might be considered for the bridge, yet its existence was a proper subject for consideration.

The actual mileage from the Southwestern blanket is 40 to 60 miles shorter to Paducah than to Cairo, and it is only sufficient to glance at the map to see, the shorter distance also being considered, that Memphis is the logical and natural gateway for Paducah rather than Cairo from all of the roads operating in the Southwestern blanket. This the Commission found, and the Illinois Central acquiesces. (See Opinion, 217 Fed., 83). The facts were all before the Commission, and well they might find, looking over the whole field, and comparing the relative advantages of Paducah and Cairo, "that the rates on logs and lumber to Paducah from points of origin to the territory involved, are unreasonable to the extent that they exceed the present rates to Cairo." (29 I. C. C. R., 719-725).

While it may be true, and there are decisions to the effect, that undue discrimination between two localities is not shown by difference of distance alone, or difference in rates alone, or by the mere fact that the difference in rates operates to the disadvantage of one locality as against another (it abundantly appeared by the evidence that those dealing in lumber at Paducah in various ways compete with Cairo merchants in the same business at a great disadvantage, and, in instances, to the destruction of the business at Paducah and its establishment at Cairo), yet all of these, together with the lay of the land, the directness of the route via Memphis as compared with the route via Cairo, and the other facts enumerated above as

they appeared to the Commission, present a situation in which appears no reason why, from the Southwestern blanket, there
 554 should be a higher rate to Paducah than to Cairo.

It is true that it was to the interest of the Cotton Belt and Iron Mountain to ship via Cairo, yet the Memphis route was to them not only available and practicable, but it has the advantages enumerated over the Cairo route; and, except for the fact that those roads would lose a part of their haul and the greater revenue derived therefrom, there is no reason why they should not, and every reason why they should, route via Memphis, unless the lumber business at Paducah is to be abandoned to its fate.

The Commission, therefore, had before it the difficult and delicate problem of giving the interests of these railroads recognition, while at the same time granting to Paducah at least equality with Cairo from the territory nearer to it than to Cairo; on more direct lines, and abundantly served by adequate railroad facilities.

Aside from isolated instances of hardship to the Rock Island and to the Louisiana & Arkansas, growing out of the order as affecting some particular locality in the blanket, it must be said that the rates are blanket rates, established by the railroads themselves; and, if there are particular instances of hardship with respect to any particular locality, it will be time to deal with that when it is properly presented to the Commission for specific consideration. There seems to be no reason why these two roads should not route their Paducah lumber via Memphis rather than via Cairo, and every reason why Paducah should be entitled to have it routed that way.

The case really narrows down to a conflict in interest between the Cotton Belt especially, and the Iron Mountain to a less degree, since it reaches Memphis with its own line, on the one side; and Paducah on the other. If Paducah is to be served, those railroads must give up something. If the railroads' interests are to be solely considered,

555 Paducah must abandon the lumber business or carry it on at an enormous disadvantage in favor of Cairo.

But the Commission must conserve, as nearly as possible, the interests of both, and, taking a comprehensive view of the entire situation, having in mind the interests of the public, the localities affected and their commercial interests, have power to compel the railroads to sacrifice something when justice requires such sacrifice. It was said by Mr. Justice McKenna in *Int. Com. Comm. v. Chicago, Rock Island & Pac. R. Co.*, 218 U. S., 88, 103—

"The outlook of the Commission and its powers must be greater than the interest of the railroads or of that which may effect those interests. It must be as comprehensive as the interest of the whole country."

We find there was substantial evidence before the Commission that the rates from the blanket territory were unduly discriminatory against Paducah, to the preference and advantage of Cairo; and, since 16 cents to Cairo was a reasonable rate, the Paducah rate should be no higher. If the lumber could go only via Cairo, this would amount to a finding that the 22-cent rate by that gateway was in itself unreasonable; but, because there is a preferable way to

Paducah via Memphis—and Paducah is situated at least as advantageously as Cairo—it is unreasonable to haul via Cairo at a higher rate if the Memphis route be open. It was not open as long as the Illinois Central stood in the way, maintaining, via Memphis, the 22-cent rate to Paducah; but when the order commanded that road to establish, with the petitioners, through routes at a rate no more to Paducah than to Cairo, this cleared the way to all of these railroads to serve Paducah on the same basis as Cairo.

The blanket local rate to Memphis is 14 cents; thence via Illinois Central to Cairo 2 cents, and to Paducah 8 cents. The Rock Island and Louisiana & Arkansas and the other petitioners, if they wished to haul via Memphis, were at the mercy of the Illinois
556 Central. What division in fact the Illinois Central made, or was willing to make, on Paducah traffic, does not appear.

The fact, however, that the Rock Island and Louisiana & Arkansas were helpless, and, if they shipped to Paducah, must do so on rates fixed on the Cairo combination, and that the Cotton Belt and Iron Mountain, if there were no other route to Paducah than via Cairo, would be entitled to maintain their 16-cent rate to Cairo on Paducah traffic, does not alter the essential fact that, another practical route being available, the Paducah rate was discriminatory and unreasonable in comparison with the Cairo rate. Whatever the reasons were, all of these petitioners participated in a rate discriminatory to Paducah. The discrimination lay in fixing the Paducah rate on the Cairo combination when justice to Paducah required the rate to be fixed on the Memphis combination.

The Commission, having power to do justice between Cairo and Paducah under Section 15, by compelling the Illinois Central, with the petitioners, to establish a more reasonable through route via Memphis at no greater rate to Paducah than to Cairo, the 22-cent rate, based on the Cairo combination, could no longer stand.

But we think we are not compelled to the conclusion that power to establish through routes and joint rates depends upon finding the petitioners guilty of discrimination. In addition to other powers enumerated in Section 15 and in Section 1, it is said in that part of the section hereinbefore quoted that the Commission may also, after hearing, with or without complaint, establish through routes and joint rates; and other parts of the section give power to correct unjust practices. The practice of compelling Paducah traffic to bear so great an additional burden, it would seem to us, could be remedied by the Commission, even though the petitioners, or any of them, were not directly responsible for it.

It would seem that the Commission itself did not consider
557 the basis of the order to be altogether discrimination by these petitioners, for they say (37 I. C. C. R., 719, 720, the second Paducah Case):

"The principal issue in the present case is, whether it is appropriate or lawful to require the defendants to establish through routes and joint rates to Paducah via Memphis. In the previous case, we held that the Memphis route was the natural route for the movement of

his traffic, but as the complaint did not contain a prayer for through routes, we did not require their establishment."

And in the case of *Iron Mountain v. United States*, 217 Fed., 80, 83, a case in which the town of Metropolis, Illinois, not far from Paducah, made a complaint of discrimination against the same railroads, and for largely the same reasons, Judge Baker, speaking for the Court, said:

"The Commerce Act gives the Commission jurisdiction to entertain a hearing against two or more railroads as joint respondents for the purpose of compelling them jointly to establish a through route and jointly to establish over such through route through rates. In a proceeding of that character the Commission would have legal jurisdiction, if there was a legal basis in the evidence to support the finding, to compel the joint railroad respondents to establish a through route with through rates, and to compel them to submit to an apportionment of the through rates. But in this proceeding, which, in our opinion, involves only a question of discrimination against each railroad separately, the Commission had no legal jurisdiction to undertake to compel these complainants to establish a through route with a through rate, jointly with the Illinois Central."

But whether the petitioners, or any of them, could be justly found to be discriminating against Paducah, or not, discrimination against Paducah existed, and we are of opinion that the Commission had power to grant Paducah relief.

If, in strict accordance with the allegations and prayer of the second petition, a through route over the Illinois Central from Memphis to Paducah had been established, then the Cotton Belt and Iron Mountain would lose the advantage of their long haul to Cairo, and the Nashville, Chattanooga & St. Louis, so far as it competed for the business, would have to haul at the same figure. This would not have interfered with the rate to Cairo, but would have com-

558 pelled the petitioners to send their Paducah traffic through Memphis. This would have required, under Section 15, a finding that the routes of the Cotton Belt and Iron Mountain via Cairo, were "unreasonably long" as compared with the other practicable route via Memphis. We say "required," not only because of the language of Section 15, but also by analogy; for we take it that if a rate cannot be condemned as discriminatory, except upon a finding based on substantial evidence that it is unreasonable, so a railroad could only be required to abandon its long haul upon substantial evidence, and a finding that the long haul was, in comparison, unreasonably long. There was substantial evidence, and, in substance, a finding to this effect, for the Commission say (29 I. C. C. R., 583, 591)——

" * * * it is evident that the route to Paducah via Cairo is, in the language of Section 15 of the act, 'unreasonably long as compared with' the direct route to Memphis."

If the route had been established via Memphis alone, and included both the Illinois Central and Nashville, Chattanooga & St. Louis, there might have been ground, and the petitioners make much of

the point, that such route over the line of the latter would in fact have made a longer through route to Paducah than via Cairo. If the order involved only the Illinois Central, an injustice might have been involved in shutting out the Nashville, Chattanooga & St. Louis from this traffic altogether. But the order does not compel any of the petitioners to route via Memphis, and does not compel the Iron Mountain and Cotton Belt to give up their long haul unless they choose to do so; so that the case is not one for the application of that part of Section 15 which withholds from the Commission power to require a railroad to give up its long haul unless it is unreasonably long as compared with a more practicable route. There was no occasion for a finding that their routes were unreasonably long in themselves. What the Commission meant was, that the Cairo to Paducah route was unreasonably long in comparison with the route via Memphis.

As their own long hauls were left open to them, it was no
559 concern of theirs that through routes were also established elsewhere. (*Int. Com. Comm. v. Chicago, Rock Island & Pac. Ry. Co.*, 218 U. S., 88-109; *Clark v. Kansas City*, 176 U. S., 114, 118).

The petitioners were given a choice of through routes, either via Memphis or Cairo, and the alternative presented to the Cotton Belt and Iron Mountain was to route via Memphis, in which case they would lose their long haul, or forego as much of their 16-cent rate to Cairo as the Illinois Central would exact for its haul thence to Paducah. They could adopt either alternative, or forego Paducah traffic altogether.

The question then remains, whether or not, if they preferred their long hauls, they could be compelled, as they were, to reduce their Cairo rate. Paducah was not on the lines of the Iron Mountain and Cotton Belt. They had no inherent right to ship to Paducah via Cairo, if, in the judgment of the Commission in the exercise of the power to establish through routes to prevent injustice to Paducah, another route was available, although thereby they must forego a part of a reasonable local rate. The reasonableness of that local rate was not a limitation upon the power of the Commission simply because it resulted in the reduction of a rate which, under other circumstances, was reasonable, for the reason, as the Commission has frequently held, "that rates may be reasonable per se and yet unlawful, because of their unduly discriminatory character." (38 I. C. C. R., 153, 162; 6 I. C. C. R., 673; 24 I. C. C. R., 220; 32 I. C. C. R., 449).

It is said in *Tap Line Cases*, 234 U. S., 1, 28, 29, in speaking of the Commission:

"That body has the authority, and it is its duty to reach all unlawful discriminatory practices resulting in favoritism and unfair advantages to particular shippers or carriers."

No doubt that the Court would have said localities, also, if appropriate.

560 These roads, therefore, must submit to the power, the exercise of which, indirectly, causes a reduction in their Cairo rate, should they choose to haul that way. The fact that it causes

them a loss becomes the result of competitive conditions, but is not confiscatory of their property. In any event, this property is not taken without due process of law. *O'Keefe v. United States* (U. S. Supreme Court, February 21, 1916). The fact is, the Commission have held on testimony and evidence properly before them that the Cairo rate was fairly remunerative. The Illinois Central must deal with these roads in fairness, or be compelled to do so by the Commission in some other proceeding. It is probable the traffic would be profitable even with considerable reduction. But it cannot, in any event, be confiscatory, unless it appears what the reduction is, and its effect. The effect of the order compels the Cotton Belt and Iron Mountain to compete with the other roads for the Paducah traffic on terms fair to Paducah. There seems to be no reason why they should not be compelled to do so.

It is true that in many cases the Commission have declined to consider issues sought to be raised in proceedings before them not included in the complaint or covered by its prayer for relief. (6 I. C. C. R., 647, 677; 29 I. C. C. R., 438, 444; 31 I. C. C. R., 623, 624; 33 I. C. C. R., 150, 151; *id.*, 318, 320;) yet the Statute itself gave the Commission the power to act on its own initiative. The whole situation was before them. None of the petitioners were taken by surprise, a full hearing was had, and the establishment of the alternative route was the only departure from the *prayer* of the complaint. What is said in *N. Y. C. & H. R. R. Co. v. Int. Com. Comm.*, 178 Fed., 138, 139, by Judge Noyes, sitting with Judges Lacombe and Ward, is directly applicable. See also *C. H. & D. Ry. Co. v. United States*, 206 U. S., 142, 149, 150.

We think the order complained of is not open to any of the objections to it. It does not deprive the petitioners of any paramount rights. Cairo is in no position to complain, and does not complain, since its rates are not affected; and Paducah obtains the relief to which she is entitled.

The motion to dismiss will be granted, and the petition and intervening petition will be dismissed, but without costs.

April 13, 1916.

J. W. WARRINGTON,
Circuit Judge.
WALTER EVANS,
District Judge.
HOWARD C. HOLLISTER,
District Judge.

And on another day of said Term, to-wit, May 13th., 1916, the following Decree was entered.

District Court of the United States, Western District of Kentucky.

In Equity. No. 33.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, ST. LOUIS, IRON
Mountain & Southern Railway Co., and The Chicago, Rock
Island & Pacific Railway Company, Petitioners, and Louisiana &
Arkansas Railway Company, Intervening Petitioner,

vs.

UNITED STATES OF AMERICA, and INTERSTATE COMMERCE COMMISSION,
Intervening Respondent.

This cause came on to be heard as upon final submission upon its merits at this term on March 27, 1916, before the Honorable John W. Warrington, Judge of the United States Circuit Court for the Sixth Judicial Circuit; the Honorable Walter Evans, Judge of the District Court of the United States for the Western District of Kentucky, and the Honorable Howard C. Hollister, Judge of the District Court of the United States for the Southern District of Ohio, Judge Evans having called to his assistance Judges Warrington and Hollister in pursuance of the provisions of the act of Congress applicable to the trial of cases such as this; and was argued by counsel. Thereupon, on consideration thereof, it is

Ordered, Adjudged and decreed as follows, viz:

That the motion of the United States of America and the motion
of the Interstate Commerce Commission to dismiss the petition
563 and the intervening petition be, and they are hereby, granted;
and that the petition and intervening petition be, and they
are hereby, dismissed; but without costs.

J. W. WARRINGTON,

Circuit Judge.

WALTER EVANS,

District Judge.

HOWARD C. HOLLISTER,

District Judge.

564 And on another day of said term, to-wit, June 7, 1916, the
following order was entered of record:

In the District Court of the United States for the Western District of Kentucky, at Louisville.

No. 33.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, ST. LOUIS, IRON Mountain & Southern Railway Company, The Chicago, Rock Island & Pacific Railway Co., Petitioners; Louisiana & Arkansas Railway Co., Intervening Petitioner,

vs.

UNITED STATES OF AMERICA, Respondent, and INTERSTATE COMMERCE COMMISSION, Intervening Respondent.

This day came the St. Louis Southwestern Railway Company; St. Louis, Iron Mountain & Southern Railway Co., and The Chicago, Rock Island & Pacific Railway Co., petitioners, and the Louisiana & Arkansas Railway Co., intervening petitioner, by their counsel, and presented to the Court their petition for appeal and assignment of errors, and upon consideration whereof, it is now ordered that said petition and assignment of errors be filed, and an appeal be, and is, hereby allowed, to have reviewed in the Supreme Court of the United States the decree and proceedings heretofore entered herein, upon giving bond according to law in the sum of One thousand dollars, which shall not operate as a supersedeas.

And thereupon the said St. Louis Southwestern Railway
565 Company; St. Louis, Iron Mountain & Southern Railway Co.,
The Chicago, Rock Island & Pacific Railway Co. and the
Louisiana & Arkansas Railway Co. presented for acceptance and approval such bond in the sum of One thousand dollars, with the American Surety Company of New York as surety, which bond is now ordered filed, and is hereby accepted and approved by the Court.

WALTER EVANS, *Judge*.

566 And on another day of said term, to-wit, June 7, 1916,
the following Assignment of Errors were tendered and filed:

In the District Court of the United States for the Western District of Kentucky.

In Equity. No. 33.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, ST. LOUIS, IRON Mountain & Southern Railway Company, and The Chicago, Rock Island & Pacific Railway Company, Petitioners, and Louisiana & Arkansas Railway Company, Intervening Petitioner,

VS.

UNITED STATES OF AMERICA, Respondent, and INTERSTATE COMMERCE COMMISSION, Intervening Respondent.

Assignment of Errors.

Now come petitioners and intervening petitioner in the above entitled cause and file the assignment of errors hereinafter set forth, upon which they will rely in their prosecution of the appeal to the Supreme Court from the decree of the District Court of the United States for the Western District of Kentucky, in the above entitled cause, entered on the 13th day of May, 1916:

I.

The Court erred in denying the application of petitioners and intervening petitioner for an interlocutory injunction herein, and in dismissing the petition and intervening petition.

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II.

The Court erred in sustaining the motion to dismiss, and in dismissing the petition and intervening petition.

III.

The Interstate Commerce Commission failed to give due consideration to the competitive conditions under which the rate to Cairo is made and the dissimilarity of conditions under which the freight is transported to Cairo and to Paducah; its order was therefore void and the Court erred in not so holding.

IV.

There was no evidence to support the finding by the Interstate Commerce Commission of unjust discrimination in favor of Cairo and against Paducah; the order of the Commission was therefore void, and the Court erred in not so holding.

V.

The Court erred in not holding that since neither of the petitioners

nor the intervening petitioner serve Paducah they cannot be said to discriminate against Paducah.

VI.

The Court erred in not holding that the Commission was without authority to reduce the present combination of rates from the southwestern lumber producing territory to Paducah in the absence of a finding by the Commission that the present combination of rates to Paducah is unreasonably high.

VII.

The Interstate Commerce Commission made no finding that the said combination of rates to Paducah was unreasonably high,
568 and the Court erred in not so holding.

VIII.

There was no substantial evidence before the Interstate Commerce Commission to sustain a finding that said combination of rates was unreasonably high, and the Court erred in not so holding.

IX.

The Court erred in sustaining the finding of the Commission, that the natural route from the southwestern lumber producing territory to Paducah is through Memphis.

X.

The Court erred in holding that the Interstate Commerce Commission has authority to compel one carrier to meet the competition created by another.

XI.

The Interstate Commerce Commission exceeded its authority in holding that the Cairo bridge is equivalent to 112 constructive miles, in, that there was no evidence to support such a finding, and the Court erred in not so holding.

XII.

The constructive mileage of the Cairo bridge is not a proper element to consider in determining whether the routes through Cairo are unreasonably long, and the Court erred in not so holding.

XIII.

The Interstate Commerce Commission is without authority to establish through routes and joint rates, in the absence of evidence of a necessity therefor, and the Court erred in not so holding.

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XIV.

There was no evidence before the Interstate Commerce Commission authorizing or justifying the establishment of through routes and joint rates from the southwestern lumber producing territory to Paducah; the order of the Commission was therefore void, and the Court erred in not so holding.

XV.

The Commission is without authority to require the establishment of through routes through Memphis via all carriers connecting at that point, but must designate the delivering carrier, and the Court erred in not so holding.

XVI.

The Court erred in not holding that the order of the Interstate Commerce Commission is confiscatory of petitioners' property, and, therefore, in violation of the Fourteenth Amendment to the Constitution of the United States.

XVII.

The Court erred in not holding that the order of the Commission is so arbitrary as to be beyond its power and, therefore, void.

Wherefore, petitioners pray that the decree of the District Court be reversed, and the order of the Interstate Commerce Commission be set aside.

EDW. A. HAID,
A. L. BURFORD,
W. F. DICKINSON,
HENRY G. HERBEL,
HENRY MOORE,

Solicitors for Petitioners.

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And on another day of said term of said court, to-wit, on June 7, 1916, the following Bond was filed and approved:

In the District Court of the United States for the Western District
of Kentucky.

In Equity. No. 33.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, ST. LOUIS, IRON
Mountain & Southern Railway Company, and The Chicago, Rock
Island & Pacific Railway Company, Petitioners, and Louisiana &
Arkansas Railway Company, Intervening Petitioner,

vs.

UNITED STATES OF AMERICA, Respondent, and INTERSTATE COM-
MERCE COMMISSION, Intervening Respondent.

Appeal Bond.

Know all men by these presents, that St. Louis Southwestern Rail-
way Company; St. Louis, Iron Mountain & Southern Railway Com-
pany, and The Chicago, Rock Island & Pacific Railway Company,
and Louisiana & Arkansas Railway Company, as principals, and
American Surety Company of New York, as surety, are held and
firmly bound unto the United States of America and the Interstate
Commerce Commission in the full and just sum of One Thousand
(\$1,000.000) Dollars, to be paid to the United States of America and
Interstate Commerce Commission, to which payment, well and truly
to be made, we bind ourselves jointly and severally, and our re-
spective successors and assigns by these presents. This bond, how-
ever, is conditioned as follows:

Whereas, the above named St. Louis Southwestern Railway Com-
pany, St. Louis, Iron Mountain & Southern Railway Company; The
Chicago, Rock Island & Pacific Railway Company and the Louisiana
& Arkansas Railway Company have prosecuted an appeal to the
Supreme Court of the United States to reverse the decree and judg-
ment of the District Court for the Western District of Kentucky,
entered on May 13, 1916, in the above entitled cause,

Now, therefore, if the above named St. Louis Southwestern Rail-
way Company; St. Louis, Iron Mountain & Southern Railway Com-
pany; The Chicago, Rock Island & Pacific Railway Company, and
Louisiana & Arkansas Railway Company shall prosecute their said
appeal to effect and answer all costs if they fail to make good their
plea, then this obligation shall be void; otherwise, to remain in full
force and effect.

[SEAL.]

ST. LOUIS SOUTHWESTERN RAIL-
WAY COMPANY,
By F. H. BRITTON, *President.*

Attest:

G. W. WARNER,
Ass't Secretary.

571 [SEAL.]

ST. LOUIS, IRON MOUNTAIN &
SOUTHERN RAILWAY COMPANY,
By J. G. DREW, *Vice-President*.

Attest:

F. W. IRLAND,
Assistant Secretary.

[SEAL.]

THE CHICAGO, ROCK ISLAND &
PACIFIC RAILWAY COMPANY,
By GEO. H. PRESLY, *Vice-President*.

Attest:

CARL,
Ass't Secretary.

[SEAL.]

LOUISIANA & ARKANSAS RAIL-
WAY COMPANY,
By WM. BUCHANAN, *President*.

Attest:

J. A. BUCHANAN,
Secretary.

[SEAL.]

AMERICAN SURETY COMPANY OF
NEW YORK, *Surety*,
By EMMETT M. MYNN,
Resident Vice-President.

Attest:

FRED. H. DOENGH,
Resident Ass't Secretary.

572 And on another day of said term, to-wit, June 7th, 1916,
the following præcipe was filed:

In the District Court of the United States for the Western District
of Kentucky.

In Equity. No. 33.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, ST. LOUIS, IRON
Mountain & Southern Railway Company, and The Chicago, Rock
Island & Pacific Railway Company, Petitioners, and Louisiana &
Arkansas Railway Company, Intervening Petitioner,

vs.

UNITED STATES OF AMERICA, Respondent, and INTERSTATE COM-
MERCE COMMISSION, Intervening Respondent.

Præcipe.

The Clerk will please copy and certify to the Supreme Court as
the record on appeal, the entire record in the lower court, including:
(1) Petition for injunction and Exhibit "A" thereto; (said Ex-
hibit "A" being the opinion and order of the Interstate Commerce

Commission in the case of Paducah Board of Trade vs. Illinois Central Railroad Company, et al., I. C. C. Docket No. 7736);

(2) Notice of hearing and order fixing hearing;

(3) Copy of complaint of Paducah Board of Trade vs. Illinois Central Railroad Company, et al., in case No. 7736 before the Interstate Commerce Commission;

(4) Certified copy of evidence taken before the Interstate Commerce Commission and all exhibits filed therewith;

(5) Copy of motion filed before the Interstate Commerce Commission for reconsideration of its opinion in case No. 7736, and order overruling same;

(6) Intervening petition of Louisiana & Arkansas Railway Company;

(7) Motion of United States to dismiss petition for injunction;

573 (8) Motion of Interstate Commerce Commission to dismiss and answer of Interstate Commerce Commission;

(9) Opinion of Interstate Commerce Commission in I. & S. Docket No. 520;

(10) Order of final submission of cause;

(11) Opinion and final decree of the District Court.

EDW. A. HAID,
A. L. BURFORD,
HENRY G. HERBEL,
W. F. DICKINSON,
HENRY MOORE,

Solicitors for Petitioners and Intervening Petitioner.

Service of a copy of the above præcipe is hereby acknowledged this 5th day of June, A. D. 1916.

BLACKBURN ESTERLINE,
Special Assistant to the Attorney General
of the United States.

JOSEPH W. FOLK,
CHAS. W. NEEDHAM,
Counsel for Interstate Commerce Commission.

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Clerk's Certificate.

I, A. G. Ronald, Clerk of the District Court of the United States, for the Western District of Kentucky, at Louisville, do hereby certify that the foregoing 573 pages contain a true and correct transcript of the record and proceedings in the case of St. Louis Southwestern Railway Company, St. Louis, Iron Mountain & Southern Railway Company, The Chicago, Rock Island & Pacific Railway Company and Louisiana & Arkansas Railway Company against the United States of America and Interstate Commerce Commission, No. 33, copies in accordance with the præcipe of the Appellants to be found on pages 572-573 of this record, as the same appears in the files and records in my said office.

Witness my hand and seal of said Court this 10th day of June, A. D., 1916.

[Seal District Court of the United States, Wes. Dist., Ky.]

A. G. RONALD, *Clerk*,
By GEORGE W. RONALD, *D. C.*

[United States internal revenue documentary stamp, series of 1914, ten cents, canceled 6/12/16. G. W. R.]

575 UNITED STATES OF AMERICA,
Western District of Kentucky,
Sixth Judicial Circuit, ss:

To United States of America and Interstate Commerce Commission,
Greeting:

You are hereby cited and admonished to be and appear at a session of the Supreme Court of the United States, to be holden at the City of Washington, D. C., on the 26th day of June next, pursuant to a Petition for Appeal filed in the Clerk's office of the District Court of the United States for the Western District of Kentucky, wherein The St. Louis Southwestern Railway Company; St. Louis, Iron Mountain & Southern Railway; The Chicago, Rock Island and Pacific Railway and Louisiana & Arkansas Railway are the appellants, and you are the appellee, to show cause, if any there be, why the Decree rendered against the appellants, as in the said Petition for Appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward D. White, Chief-Justice of the United States, this 7th day of June, in the year of our Lord one thousand nine hundred and sixteen, and of the Independence of the United States of America the one hundred and fortieth.

[Seal District Court of the United States, Wes. Dist., Ky.]

WALTER EVANS,
Judge of the District Court of the United
States for the Western District of Kentucky.

Service of the foregoing citation is hereby acknowledged this 20 day of June A. D. 1916.

JOS. W. FOLK,
CHAS. W. NEEDHAM,
Counsel for Interstate Commerce Commission.
BLACKBURN ESTERLINE,
Special Assistant to the Attorney General
for the United States.

Endorsed on cover: File No. 25,362. W. Kentucky D. C. U. S. Term No. 532. The St. Louis Southwestern Railway Company, St. Louis, Iron Mountain & Southern Railway et al., appellants, vs. The United States and Interstate Commerce Commission. Filed June 24th, 1916. File No. 25,362.

Office Supreme Court, U. S.

FILED

MAR 30 1917

JAMES D. MAHER
CLERK

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 5 **199**

THE ST. LOUIS SOUTHWESTERN
RAILWAY COMPANY, ST. LOUIS,
IRON MOUNTAIN & SOUTHERN
RAILWAY COMPANY et al.,

Appellants,

vs.

THE UNITED STATES and INTER-
STATE COMMERCE COMMISSION,
Appellees.

Appeal from the District Court of the United States for the
Western District of Kentucky.

MOTION TO ADVANCE.

DANIEL UPTHEGROVE,

Counsel for St. Louis Southwestern Railway
Company.

**HENRY G. HERBEL and
FRED G. WRIGHT,**

Counsel for St. Louis, Iron Mountain &
Southern Railway Company.

W. F. DICKINSON,

Counsel for Chicago, Rock Island & Pacific
Railway Company.

HENRY MOORE,

Counsel for Louisiana & Arkansas Railway
Company, Appellants.



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 532.

THE ST. LOUIS SOUTHWESTERN
RAILWAY COMPANY, ST. LOUIS,
IRON MOUNTAIN & SOUTHERN
RAILWAY COMPANY et al.,

Appellants,

vs.

THE UNITED STATES and INTER-
STATE COMMERCE COMMISSION,

Appellees.

Appeal from the District Court of the United States for the
Western District of Kentucky.

MOTION TO ADVANCE.

Now come the appellants above named, by their
counsel, Daniel Upthegrove, Henry G. Herbel, Fred
G. Wright, W. F. Dickinson and Henry Moore, and
move that this cause be advanced upon the docket of
this Court and set down for hearing upon some early

date to be fixed by this Court, upon the following grounds:

(1) This is a suit in equity brought by the appellants against the United States, to enjoin the enforcement of an order issued by the Interstate Commerce Commission on the 21st day of January, 1916, in its docket No. 7736, entitled Paducah Board of Trade v. Illinois Central Railroad Co. *et al.* (Rec., p. 15). The petition was filed in the District Court of the United States for the Western District of Kentucky, sitting at Louisville, Kentucky, on March 15, 1916 (Rec., p. 2). On March 27th, 1916, the Louisiana & Arkansas Railway Company filed its intervening petition in said cause (Rec., p. 30) and the cause was heard before Circuit Judge Warrington and District Judges Evans and Hollister, who, on said date, entered a final decree in said cause, sustaining the motion of the United States of America and the motion of the Interstate Commerce Commission to dismiss, and dismissed the petition and intervening petition, from which decree the appellants prosecuted their appeal to this Court and filed a transcript of record in said cause in this Court on June 24, 1916.

(2) This cause is one of general public interest and importance, as it involves the power of the Interstate Commerce Commission to compel a carrier to establish joint through rates with its connections,

to points outside the states in which it was created and chartered to operate, and thus short-haul it and make it amenable to the discrimination provision of the Act to Regulate Commerce, which it would not otherwise be, because its rails do not serve such points (St. Louis, Iron Mountain & Southern Railway Company v. United States, 217 Fed. 81), a question grazed but not hit by the decision in the

Atlantic Coast Line Case, 219 U. S. 204,

in which this Court said:

“This record presents no question as to the right of the initial carrier to refuse a shipment designated for a point beyond its own line, nor **its right to refuse to make a through route or joint rate when said route and rate would involve the continuance of a transportation over independent lines.** We, therefore, refrain from any consideration of the large question thus suggested.”

It affects revenues of appellants amounting to many thousands of dollars annually, which will be a total loss to appellants in the event that their contentions shall not be sustained by this Court, which the law provides no means of recouping.

The appellants' contentions raises questions not heretofore decided by this Court, or presented in any case now pending in this Court, viz, the power to compel the establishment of through routes and joint rates in connection with other carriers.

It is of great importance to appellants and the public at large that this question be decided at an early date, if possible.

DANIEL UPTHEGROVE,

*Counsel for St. Louis Southwestern
Railway Company;*

HENRY G. HERBEL and

FRED G. WRIGHT,

Counsel for St. Louis, Iron Mountain & Southern Railway Company;

W. F. DICKINSON,

*Counsel for Chicago, Rock Island &
Pacific Railway Company;
and*

HENRY MOORE,

*Counsel for Louisiana & Arkansas
Railway Company,
Appellants.*

The appellees above named consent to the advancement of this cause.

Jos. H. Folk.....
*Counsel for Interstate Commerce
Commission;*

Jos. H. Davis.....
Counsel for United States,

Appellees. 74

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Office Supreme Court, U. S.

FILED

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916

THE ST. LOUIS SOUTHWESTERN
RAILWAY COMPANY, ST. LOUIS,
IRON MOUNTAIN & SOUTHERN
RAILWAY et al.,

Appellants,

vs.

THE UNITED STATES OF AMERICA
and INTERSTATE COMMERCE
COMMISSION.

No. 5  199

Appeal from the District Court of the United States
for the Western District of Kentucky.

STATEMENT, BRIEF AND ARGUMENT FOR APPELLANTS.

DANIEL UPTHEGROVE,
JOHN R. TURNEY,

*Attorneys for St. Louis Southwestern Rail-
way Company.*

HENRY G. HERBEL,
FRED G. WRIGHT,

*Attorneys for St. Louis, Iron Mountain &
Southern Railway Company.*

W. F. DICKINSON,
W. T. HUGHES,

*Attorneys for The Chicago, Rock Island &
Pacific Railway Company.*

HENRY MOORE,

*Attorney for Louisiana & Arkansas Railway
Company.*



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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916

THE ST. LOUIS SOUTHWESTERN
RAILWAY COMPANY, ST. LOUIS,
IRON MOUNTAIN & SOUTHERN
RAILWAY et al.,

Appellants,

No. 532.

vs.

THE UNITED STATES OF AMERICA
and INTERSTATE COMMERCE
COMMISSION.

Appeal from the District Court of the United States
for the Western District of Kentucky.

STATEMENT, BRIEF AND ARGUMENT FOR APPELLANTS.

STATEMENT OF THE CASE.

This is an appeal from the decree or order of the District Court of the United States for the Western District of Kentucky (Circuit Judge J. W. Warrington and District Judges Walter Evans and Howard C. Hollister sitting), dismissing the appellant's bill for an injunction to enjoin the enforcement of an order of the Interstate Commerce Commission requiring appellants and other carriers to establish and main-

tain for a period of two years from the effective date of said order of the Interstate Commerce Commission through routes and joint rates on logs and lumber from the lumber producing territory in that portion of Arkansas and Louisiana south of the line of the Rock Island Railway extending from Memphis to Little Rock, including Des Arc, Ark., to Paducah, Ky., no higher than the present rates to Cairo, Ill., on the motions of the United States of America and the Interstate Commerce Commission (Rec., p. 310).

In order to present intelligently the issues involved we deem it advisable to refer briefly to the history of this litigation, which is in substance that:

On or about the 28th day of June, 1913, the Paducah Board of Trade, a corporation with headquarters at Paducah, Ky., filed with the Interstate Commerce Commission a petition against these appellants and other carriers, alleging in substance that the rates on logs and lumber to Paducah from the lumber producing territory in Louisiana and Arkansas were unjust and unreasonable and unduly discriminated against Paducah to the undue preference and advantage of Cairo. A hearing was had in said case and on or about the 3rd day of March, 1914, the Interstate Commerce Commission rendered its opinion (29 I. C. C. 583), in which it found that these appellants and the other carriers defendant in said suit—

“unduly discriminated against the dealers and

manufacturers of lumber at Paducah to the undue preference and advantage of those located at Cairo by the maintenance of the rates on lumber at present in effect from the producing points herein involved,"

and requiring the appellants herein—

"to maintain rates to Paducah from substantially equidistant points or groups in Arkansas and Louisiana west of the river, on and south of the line of the Chicago, Rock Island & Pacific from Memphis to Little Rock, no higher than those contemporaneously maintained from the same points to Cairo."

The Commission said in its opinion, however, that:

"Since the complaint did not contain a specific request for the establishment of through routes and joint rates, we can not order their establishment * * *."

No order was entered by the Commission in that case and these appellants did not comply with the suggestions contained in the Commission's opinion.

About the same time a suit was instituted by the Metropolis Commercial Club of Metropolis, Ill., in which it was alleged that the rates of the appellants and other carriers defendant in that case

"for the transportation of logs, lumber and arti-

cles taking the lumber rates, from * * * Louisiana, and that part of the State of Arkansas lying on and south of the line of the Chicago, Rock Island & Pacific Railway, Memphis, Tenn., to Little Rock, Ark., are unreasonable, unjustly discriminatory against Metropolis and unduly preferential to Cairo, Ill."

After hearing, the Commission rendered an opinion in that case (30 I. C. C. 40), in which it referred to its previous decision in the Paducah case and held that appellants herein and the other carriers west of the Mississippi River parties to said cause

"should establish from points or groups in the territory described lying west of the Mississippi River and substantially equidistant from Cairo and Metropolis, rates to Metropolis via the routes at present used, unless they elect to do so over the more direct route via Memphis, not in excess of 1 cent per 100 pounds higher than the rates contemporaneously maintained from the same points or groups to Cairo" (30 I. C. C., *l. c.* 43).

The Commission also entered an order in that case requiring the carriers to publish and maintain for a period of two years rates to Metropolis not more than 1 cent in excess of the rates contemporaneously maintained to Cairo.

Two of the appellants herein, to wit, the St. Louis, Iron Mountain & Southern Railway (which will hereafter be referred to as the Iron Mountain) and St.

Louis Southwestern Railway (which will hereafter be referred to as Cotton Belt), applied to the United States District Court for the Eastern District of Illinois for an injunction restraining the enforcement of said order of the Interstate Commerce Commission. After hearing and arguments that Court (Circuit Judge Baker and District Judges Humphrey and Wright sitting) granted the injunction prayed for, and the decree of the Court in that case was by agreement of counsel made final (St. Louis, Iron Mountain & Southern Ry. Co. v. United States, 217 Fed. 80). The United States and the Interstate Commerce Commission appealed from that decree to this court, where it was voluntarily dismissed (241 U. S. 693) on May 26, 1916.

Thereafter, to wit, on or about the 15th day of February, 1915, the Paducah Board of Trade filed another petition with the Interstate Commerce Commission (Rec., p. 8), in which it was alleged in substance that

“Paducah, Ky., is on the south bank of the Ohio River and is a jobbing and manufacturing city and does a large business in buying, selling, re-handling and manufacturing lumber and lumber commodities, and is a large shipper of lumber and lumber commodities made from hardwood lumbers, pine and cottonwood and gum. That the principal competitors of the lumber merchants and manufacturers of Paducah are located at

Cairo, Ill., a city located on the north bank of the Ohio River about forty miles from Paducah and that both Cairo and Paducah obtain a large part of their supply of lumber from the producing territory west of the Mississippi River in the States of Louisiana and Arkansas, and that the rates maintained by defendants (petitioners herein) on lumber and lumber commodities from said territory to Paducah, Ky., are from 2 to 6 cents higher than the rates contemporaneously maintained by defendants to Cairo, Ill.”

Said petition further alleged in substance that the rates maintained by appellants herein and the other carriers respondent in said cause

“on logs and lumber in carloads to Paducah from producing points in Louisiana and Arkansas, on and south of The Chicago, Rock Island & Pacific Railway from Memphis, Tenn., to Little Rock, Ark., and including Des Arc, Ark., are unjust, unreasonable and discriminatory and give to Cairo, Ill., an undue preference and advantage and subject Paducah, Ky., to an undue prejudice and disadvantage; that the route from said producing points to Paducah, Ky., via Cairo, Ill., is unduly long as compared with the route from said producing points to Paducah via Memphis, Tenn., and that through routes and joint rates should be established from said producing points to Paducah, Ky., via Memphis, Tenn., and joint rates should be established via said route which

do not exceed the rates contemporaneously maintained from said producing points to Cairo, Ill.”

Complainant, therefore, prayed for the establishment of

“through routes and joint rates for shipments of logs and lumber to Paducah, Ky., from points in the States of Louisiana and Arkansas on and south of the line of The Chicago, Rock Island & Pacific Railway from Memphis, Tenn., to Little Rock, Ark., and including Des Arc, Ark., via Memphis, Tenn., with joint rates via said routes which shall not exceed the rates contemporaneously charged for the transportation of logs and lumber from the same points to Cairo, Ill.”

Testimony was taken in the latter case at Paducah, Ky., on May 24, 1915 (a certified copy of which was read in evidence in this cause [Rec., pp. 93 *et seq.*]), and the case submitted to the Interstate Commerce Commission on briefs and oral arguments on October 30, 1915. On January 21, 1916, the Interstate Commerce Commission rendered its opinion and entered the order herein complained of (which opinion and order were filed with the petition herein as Exhibit “A” thereto [Rec., p. 8]) which requires these appellants and the other carriers defendant in said cause to establish

“and thereafter to maintain through rates for

the transportation of logs and lumber via Cairo, Ill., or Memphis, Tenn., to Paducah, Ky., from points or groups in Arkansas and Louisiana west of the Mississippi River on and south of the line of the Chicago, Rock Island & Pacific Railway from Memphis, Tenn., to Little Rock, Ark., including Des Arc, Ark.; and to establish and maintain joint rates to Paducah, Ky., applicable via such through routes, not in excess of the rates at present in effect from the same points or groups to Cairo, Ill.”

Appellants, St. Louis Southwestern Railway Company, St. Louis, Iron Mountain & Southern Railway and The Chicago, Rock Island & Pacific Railway (herein termed Rock Island), thereafter filed with the Interstate Commerce Commission a motion for reconsideration of its opinion and order, which motion was, on the 3rd day of March, 1916, denied by the Interstate Commerce Commission (Rec., p. 292).

The appellants, the St. Louis Southwestern Railway Company, the St. Louis, Iron Mountain & Southern Railway Company and The Chicago, Rock Island & Pacific Railroad Company, thereupon, on March 15, 1916, filed in the District Court of the United States for the Western District of Kentucky, their petition for an injunction as aforesaid (Rec., pp. 3 to 25, inclusive), which was set down for hearing before and was heard by the three Judges aforesaid on March 27, 1916, on which date the Louisiana & Ar-

kansas Railway Company filed in said cause its intervening petition (Rec., p. 30). The petition of appellants, as well as the intervening petition of the Louisiana & Arkansas Railway Company, alleged that the decree, or order, of the Interstate Commerce Commission, aforesaid, was and is void for the following reasons (Rec., pp. 5 and 6):

(1) The Commission by its said order attempts to establish joint rates less in amount than the present combination of rates, although it has not found the present combination of rates to be unreasonably high.

(2) There was no evidence before the Interstate Commerce Commission from which it could find the present combination of rates to be unreasonably high.

(3) In determining whether "the present rates to Paducah are unjustly discriminatory and give an undue preference to Cairo", the Commission failed to consider the dissimilarity of conditions under which freight is transported and rates made to Cairo and Paducah, respectively.

(4) There was no evidence before the Commission to sustain a finding that the present combination of rates makes or gives an undue or unreasonable preference or advantage to Cairo.

(5) The Commission is without authority to find petitioners guilty of discrimination against a point

which they do not serve with their own rails, and to which they publish no joint through rates.

(6) Said order of the Commission is not responsive to the prayer of the complaint.

(7) The prayer of the complaint being for the establishment of through routes and joint rates via Memphis, the Commission was without jurisdiction to enter an alternative order as it attempted to do.

(8) The Commission is without jurisdiction to establish through routes and joint rates over the lines of petitioners, St. Louis, Iron Mountain & Southern Railway Company, via Memphis, in the absence of a finding that the routes via Cairo are unreasonably long.

(9) There was no evidence before the Commission from which it could find that routes over the lines of petitioners, St. Louis Southwestern Railway Company, or St. Louis, Iron Mountain & Southern Railway Company via Cairo are unreasonably long.

(10) The Commission has not designated the carrier to the through routes ordered by it, between Memphis and Paducah.

(11) The Commission is without authority to order through routes via all lines operating between Memphis and Paducah.

(12) There was no evidence before the Commission bearing upon the constructive mileage of the bridge at Cairo.

(13) The Commission is without authority to take into consideration the constructive mileage of a bridge in determining the reasonableness of a route.

(14) There was no evidence to support the finding of the Commission that the present Cairo rate would be a reasonable rate for the transportation of lumber and logs to Paducah.

(15) There was no evidence before the Commission justifying the establishment of through routes and joint rates.

(16) The order of the Commission amounts to confiscation, and is, therefore, in violation of the Fifth Amendment to the Constitution of the United States.

Petitioners further alleged that "unless a temporary restraining order be issued as hereinafter prayed, petitioners will on and after the effective date of said order of the Interstate Commerce Commission be required to charge and collect for the transportation of logs and lumber to Paducah, the rates prescribed therein, which rates petitioners allege, **were prescribed by the Commission without lawful authority**, are unreasonably low and in effect confiscate petitioners' property; that they have no adequate remedy at law in the premises and will suffer irreparable injury unless such temporary restraining order be issue. To said petition was attached as Exhibit "A" the report and order of the Interstate Commerce Commission requiring appellants to estab-

lish through routes and joint rates from the southwestern lumber producing territory to Paducah, as aforesaid (Rec., pp. 8 to 16, inclusive).

To this petition of appellants the United States of America, on March 27, 1916, filed its motion to dismiss said petition on the grounds that (Rec., p. 36):

1. The petition is without equity on its face and does not state any cause of action against the respondent, and the Court may not grant the relief prayed or any part of the same.

2. It appears that the report and order of the Interstate Commerce Commission were regularly made and entered, after full hearing and on evidence adduced on issues made by the proper parties before the Commission, and the petition does not show any lack of power or authority on the part of the Commission to make and enter the order now sought to be annulled and enjoined.

3. The petition does not show that there is, or may be, any confiscation of property of petitioners, or that the petitioners have been deprived of any right protected by the Constitution of the United States, or of any other right within the jurisdiction of the Court to protect.

4. The petition is otherwise vague, uncertain, indefinite and insufficient.

And the Interstate Commerce Commission, having intervened in said cause, on the same date filed its

motion to dismiss the petition and answer thereto combined, in which it prayed that the said petition be dismissed for the reasons:

“That the petition does not present a justiciable issue triable by this Court, in that it does not appear that this respondent was without jurisdiction under the Act to Regulate Commerce to enter the order complained of; or that this respondent did not grant a full hearing to the parties before the entry of said order; nor does the petition set forth any, or sufficient, facts to show confiscation of the property of petitioners, or of either of them, or any other violation of the constitutional rights of the petitioners, or either of them, entitling them, or either of them, to the relief, or any part thereof, prayed for” (Rec., p. 37).

And answered admitting paragraphs one, two, three and five and denied paragraphs six and seven of said petition, and alleged that, in a certain proceeding before it, known as I. & S. Docket No. 520, to which these appellants were parties, “the rates on lumber to Cairo, Ill., were investigated and their reasonableness determined by it, as shown in 34 I. C. C. Reports, page 652, copy of which report and order was filed with said answer as Exhibit ‘B’ ”. Further answering said petition, it alleged that it had jurisdiction of the matters in controversy and of the petitioners

and each of them in the proceeding before it, in which the order in controversy was entered, that it proceeded in the investigation and hearing of said cause before it in accordance with the provisions and requirements of the Act to Regulate Commerce, as amended; that there was substantial evidence to support its findings and the order in controversy; that no constitutional rights of the petitioners or of any of them have been or are violated or impaired by the said order in controversy, and that the findings of fact by this respondent in said proceedings before it and the order entered thereon were and are final and conclusive upon the petitioners herein and denied that petitioners were entitled to the relief prayed for or any part thereof (Rec., pp. 37 and 38). At said hearing the appellants read in evidence a certified copy of the transcript of the stenographer's notes of the hearing held at Paducah, Ky., May 24, 1915, before Special Examiner LaRoe in the case of Paducah Board of Trade v. Illinois Central R. R. *et al.*, Docket 7736, and of all exhibits filed at that hearing (Rec., pp. 93 and 291), and also filed as its Exhibit "C" to said petition appellants' motion for a reconsideration of the Interstate Commerce Commission's report and order and the order overruling same (Rec., pp. 292-293). Said motion for reconsideration being as follows (formal parts omitted):

MOTION FOR RECONSIDERATION.

Now come respondents, St. Louis Southwestern Railway Company, St. Louis, Iron Mountain & Southern Railway Company, and The Chicago, Rock Island & Pacific Railway Company, and respectfully pray that the Commission reconsider its decision in the above-entitled cause, and as grounds therefor state:

I.

The Commission erred in establishing joint rates less than the present combination rates in the absence of a finding that the present combination rates are unreasonably high.

II.

The Commission erred in finding (if they did so find) that the present combination rates to Paducah are unreasonably high because there was no evidence before it to sustain such finding.

III.

The Commission erred in finding that "the present rates to Paducah are unjustly discriminatory and give an undue preference to Cairo" in that

(a) The Commission failed to consider the dis-

similarity in conditions under which freight is transported and rates made to Cairo and Paducah, respectively.

(b) There was no evidence before the Commission to sustain a finding that the present combination rates make or give any undue or unreasonable preference or advantage to Cairo.

IV.

The order of the Commission is not responsive to the prayer of the complaint.

V.

The prayer of the complaint being for through routes and joint rates via Memphis, the Commission is without jurisdiction to establish through routes and joint rates via Cairo in this proceeding.

VI.

The Commission is without jurisdiction to establish through routes and joint rates via Memphis in the absence of a finding that the routes via Cairo are unreasonably long.

VII.

- The order of the Commission establishing through routes via Memphis is void because the carriers, parties to the through route beyond Memphis, have not been designated.

VIII.

The Commission erred in taking into consideration the constructive mileage of the Cairo bridge because there was no evidence in this case bearing on that question.

IX.

The Commission erred in considering the constructive mileage of the Cairo bridge in determining the reasonableness of the routes via Cairo.

X.

The Commission recognizes in its opinion that the Rock Island is forced by competitive conditions to meet the Cairo rate of the other carriers, but nevertheless fails to give that fact consideration.

XI.

The Commission erred in finding that the present Cairo rate would be a reasonable rate to apply to the transportation of lumber and logs to Paducah.

XII.

There was no evidence before the Commission from which it could find that the present Cairo rate would be a reasonable rate to apply to the transportation of lumber and logs to Paducah.

XIII.

The Commission holds that to disregard everything but distance is obviously improper—yet, its decision is based upon distance alone and disregards the competitive conditions existing at Cairo.

XIV.

The Commission erred in establishing through routes in this case via either Memphis or Cairo, there being no evidence before it justifying such an order.

XV.

The order of the Commission amounts to confiscation.

Wherefore, these respondents respectfully pray the Commission to reconsider its decision in this case, and during the pendency of this motion, stay the enforcement of its order of date January 21, 1916, which by its terms becomes effective on or before March 20, 1916.

Said cause was then taken under advisement until the 13th day of May, 1916, on which day the Court filed its opinion and entered its decree, sustaining the motions of the United States of America and of the Interstate Commerce Commission to dismiss the petition and the intervening petition, and dismissed

said petitions (Rec., pp. 296 to 310, inclusive). On June 7, 1916, appellants and intervening petitioner Louisiana & Arkansas Railway Company, filed their assignment of errors in the District Court of the United States for the Western District of Kentucky and prayed for an appeal to this court, which was duly allowed them on said day (Rec., pp. 311 to 314, inclusive). The errors thus assigned are as follows:

I. The Court erred in denying the application of petitioners and intervening petitioner for an interlocutory injunction herein, and in dismissing the petition and intervening petition.

II. The Court erred in sustaining the motion to dismiss and in dismissing the petition and intervening petition.

III. The Interstate Commerce Commission failed to give due consideration to the competitive conditions under which the rate to Cairo is made and the dissimilarity of conditions under which the freight is transported to Cairo and to Paducah; its order was therefore void and the Court erred in not so holding.

IV. There was no evidence to support the finding by the Interstate Commerce Commission of unjust discrimination in favor of Cairo and against Paducah; the order of the Commission was therefore void, and the Court erred in not so holding.

V. The Court erred in not holding that since neither of the petitioners nor the intervening peti-

tioner serve Paducah they can not be said to discriminate against Paducah.

VI. The Court erred in not holding that the Commission was without authority to reduce the present combination of rates from the southwestern lumber producing territory to Paducah in the absence of a finding by the Commission that the present combination of rates to Paducah is unreasonably high.

VII. The Interstate Commerce Commission made no finding that the said combination of rates to Paducah was unreasonably high, and the Court erred in not so holding.

VIII. There was no substantial evidence before the Interstate Commerce Commission to sustain a finding that said combination of rates was unreasonably high, and the Court erred in not so holding.

IX. The Court erred in sustaining the finding of the Commission, that the natural route from the southwestern lumber producing territory to Paducah is through Memphis.

X. The Court erred in holding that the Interstate Commerce Commission has authority to compel one carrier to meet the competition created by another.

XI. The Interstate Commerce Commission exceeded its authority in holding that the Cairo bridge is equivalent to 112 constructive miles, in that there was no evidence to support such a finding, and the Court erred in not so holding.

XII. The constructive mileage of the Cairo bridge is not a proper element to consider in determining whether the routes through Cairo are unreasonably long, and the Court erred in not so holding.

XIII. The Interstate Commerce Commission is without authority to establish through routes and joint rates, in the absence of evidence of a necessity therefor, and the Court erred in not so holding.

XIV. There was no evidence before the Interstate Commerce Commission authorizing or justifying the establishment of through routes and joint rates from the southwestern lumber producing territory to Paducah; the order of the Commission was therefore void, and the Court erred in not so holding.

XV. The Commission is without authority to require the establishment of through routes through Memphis via all carriers connecting at that point, but must designate the delivering carrier, and the Court erred in not so holding.

XVI. The Court erred in not holding that the order of the Interstate Commerce Commission is confiscatory of petitioners' property, and therefore in violation of the Fourteenth Amendment to the Constitution of the United States.

XVII. The Court erred in not holding that the order of the Commission is so arbitrary as to be beyond its power and, therefore, void (Rec., p. 312).

Appellants also filed their appeal bond in the sum of one thousand dollars (\$1,000.00) on June 7, 1916, which was by the Court approved (Rec., pp. 314 and 315).

SPECIFICATION OF ERRORS RELIED UPON.

The decree dismissing appellants' petition for an injunction is erroneous.

I.

Because the Interstate Commerce Commission had no power to establish through routes and joint rates from the producing territory in Arkansas and Louisiana to Paducah, Ky.

II.

That, as none of appellants' rails reach Paducah, Ky., they can not be guilty of discrimination against that point.

III.

There was no necessity for the establishment of through routes and joint rates to Paducah.

IV.

Because the Interstate Commerce Commission did not find that the combination rates to Paducah, Ky., were unreasonable *per se*, but were so only when considered in relation to the rates to Cairo, which

finding of unreasonableness *per se* is an indispensable prerequisite to the establishment of through routes and joint rates by the Interstate Commerce Commission and it was therefore error for the District Court to sustain the Interstate Commerce Commission's order.

V.

Because the Interstate Commerce Commission ignored the competitive conditions of water and rail competition existing at Cairo, shown by the evidence, which do not exist at Paducah, which constituted such dissimilarity of circumstances and conditions as ought to have justified the District Court in refusing to approve the Interstate Commerce Commission's order.

VI.

Because the Interstate Commerce Commission's order was based on distance alone and its method of computing the distance by using a constructive mileage of 200 miles for the bridge at Cairo, Ill., was erroneous and hence the District Court should not have sustained its order.

VII.

Because there was no evidence before the Interstate Commerce Commission of the constructive mileage of the Cairo bridge.

VIII.

Because the Interstate Commerce Commission erred in holding that the route to Paducah via Cairo, Ill., was a circuitous one, within the meaning of Section 15 of the Act to Regulate Commerce, and, in so holding, violated said section and the District Court in sustaining its said ruling committed error.

IX.

Because the Interstate Commerce Commission erred in requiring the appellants, the Cotton Belt and Iron Mountain Railways, to establish through routes and joint rates to Paducah, Ky., and thus meet the short line mileage of the Rock Island Railway and depriving the Iron Mountain and Cotton Belt of revenue for service for the additional haul over their rails, in violation of Article V of the Constitution of the United States and the District Court erred in sustaining its order for that reason.

X.

Because there was no discrimination against Paducah in favor of Cairo proved before the Interstate Commerce Commission or the District Court.

XI.

Because the order of the Interstate Commerce Commission did not name the connections via which the through routes and joint rates should be established, nor could it do so because the complainant failed to name the carriers via which it sought such through routes and joint rates, as it was required by law to do.

XII.

Because there was no evidence before the Commission or the District Court that the Cairo rates are reasonable for the service to Paducah.

XIII.

Because the order of the Interstate Commerce Commission establishing through routes and joint rates is confiscatory of appellants' property.

ARGUMENT.

I.

THE INTERSTATE COMMERCE COMMISSION HAD NO POWER TO ESTABLISH THROUGH ROUTES AND JOINT RATES FROM THE PRODUCING TERRITORY IN ARKANSAS AND LOUISIANA TO PADUCAH, KY.

This case involves the power of the Interstate Commerce Commission to establish through routes and joint rates from points west of the Mississippi River in Arkansas and Louisiana, south of the Rock Island Railway (including Des Arc, Ark.), and Paducah Ky., on logs and lumber, and to forbid a discrimination in rates alleged to exist in favor of Cairo, Ill., which is about equidistant from many points in the territory above described, with Paducah, to which higher rates are charged.

NO POWER TO ESTABLISH THROUGH ROUTES AND JOINT RATES.

While the right to establish through routes and joint rates between common carriers is vested in the Commission by the Act to Regulate Commerce, we challenge the power of Congress to delegate such authority to the Commission, because it is repugnant to the Federal constitutional prohibition (Article 5) for-

bidding the taking of one's property without due process of law, depriving a person of his property without just compensation and denying him the equal protection of the law. That Congress has plenary power to regulate interstate commerce is conceded, but it does not follow that, because it has such power, it can compel a carrier chartered by a state for the purpose of constructing and operating a railway wholly within that state to extend its rails by legislative fiat to the four corners of the earth, which the compulsory establishment of through routes and joint rates necessarily does. In short, we contend that, inasmuch as a stockholder subscribes for stock in a railway company on the theory that his liability is to be limited to the operation of that railway within the confines of the state, or states, by which it is chartered to carry on its business, he has the right to object to that company engaging in business outside of those limits to his detriment on the ground that to do so is *ultra vires* and subjects him to a liability not contemplated by, or reasonably included in, his contractual obligation in making his purchase of stock and that the administrator of his railway has the same right. That a carrier may, in the absence of legislative prohibition, either by the state of its creation or elsewhere, do business beyond the confines of the state of its creation, does not justify its doing so when challenged by one of its stockholders.

For that reason, any order of this Commission compelling it to use the rails of other carriers to reach points it does not care to directly serve and thereby rendering it liable for the acts of the agents of the owners of such rails, clearly contravenes the constitutional guarantees aforementioned. In other words, a carrier can not lawfully be compelled to enter into a partnership with another carrier against its will.

This truism was recognized by this Court in the

Atlantic Coast Line Case, 219 U. S. 204,

in which it upheld the Carmack Amendment **solely** on the ground that the carrier had **voluntarily** made its connection its **agent** and thereby became liable for its acts, which it would not otherwise have been, and mooted the question as to whether it could be compelled to be so, if it had not **voluntarily** assumed the obligation, by saying:

“This record presents no question as to the right of the initial carrier to refuse a shipment designated for a point beyond its own line, nor its right to refuse to make a through route or joint rate when such route and rate would involve the continuance of a transportation over independent lines. We, therefore, refrain from any consideration of the large question thus suggested. The shipments involved in the present case were **voluntarily received** by an initial carrier who undertook to escape carrier's liability beyond its own line by a provision limiting lia-

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bility to loss upon its own line. This was forbidden by the Carmack amendment and any stipulation and condition in the special receipt which contravenes the rule in question is invalid.

“Reduced to the final results, the Congress has said that a receiving carrier, in spite of any stipulation to the contrary, shall be deemed, when it receives property in one state to be transported to a point in another involving the use of a connecting carrier for some part of the way, to have **adopted such other carrier as its agent**, and to incur carrier liability throughout the entire route, with the right to reimbursement for a loss not due to his own negligence.”

The injustice of such a requirement will become apparent from the following illustration: The rails of none of these carriers reach Paducah, Ky., therefore, they can not be held guilty of discrimination against that city, according to the ruling of the United States District Court for the Eastern District of Illinois, in the case of two of these appellants, viz, the **St. Louis Iron Mountain & Southern Railway and the St. Louis Southwestern Railway Company v. The United States**, 217 Fed. 81-83, wherein it said:

“The railroad of neither complainant touches Metropolis. Each has a 16-cent rate over its own rails from points of origin in southwestern lumber territory to Cairo. This Cairo rate, the record shows, was an abnormally low rate, forced upon these complainants by competition of other

trunk lines. Neither of the complainants joins with any other railroad in making a through route and a through rate to Metropolis. When lumber reaches Cairo over the line of either of the complainants the shipper pays 16 cents per hundredweight, which is a rate that the Commission has not found excessive for that service. If the lumber is to go beyond complainants' lines at Cairo and is destined to Metropolis, it must be carried on the independent line of the Illinois Central, and the shipper must pay therefor 6 cents per hundredweight, which the Commission has not found to be an excessive charge for that service. How can it be said on this basis of fact that either of the complainants is discriminating against Metropolis? How can any one discriminate against another whom he does not serve and with whom he does not come in contact? **We believe that, as a matter of law, the charge of discrimination can not be brought by a locality against any railroad that does not serve that locality, either directly by its own route or by a joint arrangement with other railroads for a through route and a joint rate."**

And the Interstate Commerce Commission has likewise so held. See

**Johnson & Co. v. A. T. & S. F. Ry. Co.,
21 I. C. C. 639,**

in which it said:

"Neither of complainants is on the line of defendant or the St. Joseph & Grand Island Rail-

way. The Commission has repeatedly held that a carrier can not be charged with giving preference or advantage to a community which it does not serve; nor be charged with subjecting such community to prejudice or disadvantage (*Bainbridge Board of Trade v. Ry.*, 15 I. C. C. 586; *Traugott Schmidt & Sons v. R. R.*, 19 I. C. C. 535; *Roberts Cotton Oil Co. v. R. R.*, 21 I. C. C. 248)."

In order to obviate this ruling, Paducah sought to force these defendants to extend their rails to Paducah, Ky., by the device of compelling them to establish joint rates and through routes with their connections at Memphis, Tenn., and then having them declared guilty of discriminating against Paducah, thus accomplishing, indirectly, what it could not do directly. An appeal was taken from the judgment in the Metropolis case to this court by the Interstate Commerce Commission, but, before it was reached for argument, it discovered the error of its way and voluntarily dismissed the appeal (241 U. S. 693).

There is no way of getting away from the fact that the establishment of through routes and joint rates creates a partnership between the carriers parties thereto and renders the initial line liable for the acts of its connections to destination under the Carmack amendment. In other words, it establishes an

agency in which the originating carrier has no voice of selection, renders it liable for the acts of an agent over which it has no control, and who perchance may be its arch-enemy. The doctrine of agency has always heretofore included the power of appointment and selection by the principal, because it necessarily implies the reposing of confidence in the person appointed—an indispensable safeguard to the assumption of such a dangerous relationship—and hence has always been regarded as personal in its nature. Yet we are told that these hoary principles of the law which have always been thought to be protected by the constitutional guarantees aforesaid, may now be ruthlessly swept aside and the appointing power of the Commission be substituted therefor. Let us pause for a moment and consider the far-reaching consequences of the **compulsory** establishment of such an **agency**. Suppose we had a powder plant on our rails within ten miles of their terminus. The owner ships a carload of his powder to Bangor, Maine, or to Alaska, for that matter; just before it reaches its destination a brakeman on the train carelessly permits the car to collide with another with such force as to cause the ignition of the powder or carelessly throws a lighted cigarette where it does the same and causes an explosion, resulting in a damage of \$100,000.00. Under the law, we would be liable for his act, for he is our

agent in the eye of the law, notwithstanding we had no voice in his selection nor control over his actions, and only received revenue for a ten-mile haul. Can we be blamed for wanting to avoid such a risk? Again, under the law of agency on which these transportation relations must necessarily rest, we could be sued in Bangor, Maine, or Alaska, on any kind of a claim by service on the destinal or any intermediate carrier (**Newcomb v. Railway, 182 Mo. 706**) and be put to the expense of employing lawyers there to defend the suits and taking our witnesses there to testify in our defense in an alien court, a condition brought about by a relationship which we were in nowise instrumental in creating. The liabilities and complications resulting from such a forced relationship are manifold and justify the complaints of carriers against "regulation without responsibility."

The question here presented therefore is, does the fact that a carrier hauls freight over its own line in the state in which it is chartered to operate to its terminus, give to another town off its rails and forty-three miles distant from such terminus on the line of another railway, in another state in which it is not chartered, and has no desire to operate, the right to a joint through rate of the same measure that it charges for its one-line haul over its own rails, simply because the mileage via its and another railway with which it has physical connection, is practi-

cally the same? It seems to us that the mere statement of this question begets the answer "no" for the reason that it deprives its terminal town of the natural advantage of its location and gives it to a town not entitled to it and deprives it of the long haul on such traffic which it was constructed largely for the purpose of carrying and which the state that chartered it, in legal effect, guaranteed to it and requires it to short-haul itself and pay to its connection a larger division of its rate than it would otherwise be required to do if the haul was on a combination rate. The record shows that Cairo is the terminus of two trunk line roads, viz, the Iron Mountain and the Cotton Belt Railways, the two heaviest lumber carrying roads from the southwestern lumber producing territory, and of the Rock Island, another heavy lumber producing road in connection with the Illinois Central Railroad, and is served by two other trunk lines, the Illinois Central and Mobile & Ohio Railroad, the two heaviest lumber carrying roads east of the Mississippi River from the southwestern yellow pine and hardwood producing territory, while Paducah is on a branch line of the Illinois Central and Nashville, Chattanooga & St. Louis Railways (the latter being an east and west line which does not penetrate the southwestern lumber producing territory). By sustaining this decree, this Court must so hold. The remedy for this situation is the pass-

age by Congress of an act compelling all carriers engaging in interstate commerce to incorporate under a Federal statute. Until that is done, a carrier can not be compelled by the behest of the Interstate Commerce Commission or otherwise, to extend its rails to a point beyond the confines of the state of its creation, as the Iron Mountain Railway was incorporated under the laws of the states of Missouri and Arkansas and the Cotton Belt was created by the laws of the State of Missouri and the Rock Island was created by the laws of the states of Illinois and Iowa, and none of them can be compelled to operate roads in the State of Kentucky.

II.

AS NONE OF APPELLANTS' RAILS REACH PADUCAH, KY., THEY CAN NOT BE GUILTY OF DISCRIMINATION AGAINST THAT POINT.

Our second contention is that inasmuch as neither of these petitioners has a line of railroad serving Paducah and neither of them publish joint through rates to that point, they can not be guilty of discriminating against it.

The evidence shows that the Cotton Belt and Iron Mountain both have direct lines of railway serving Cairo from the southwestern lumber producing terri-

tory, but neither of them has a line extending beyond Cairo in the direction of Paducah, and, as was found by the Interstate Commerce Commission in the case of **Chicago Lumber & Coal Co. v. Tioga Southern Ry. Co.**, 16 I. C. C. 323, 329:

“Their rates to Cairo * * * on the traffic going beyond marks the limit of their earnings thereon.”

The line of the Rock Island extends no nearer Paducah than Memphis. It publishes joint through rates to Cairo in connection with the Illinois Central, but publishes no joint through rates to Paducah.

The Louisiana & Arkansas does not reach either Cairo or Paducah with its own rails. It publishes joint through rates to Cairo in connection with the direct lines to Cairo, to wit, the Cotton Belt and Iron Mountain, and also in connection with the Vicksburg, Shreveport & Pacific and Mobile & Ohio (neither of which serve Paducah), via Shreveport, La., and Vicksburg, Miss.

The Paducah rates, via all these routes, are made up of the rates to Cairo, plus the rates of the connecting carriers beyond. Under these circumstances, we contend we can not be adjudged guilty of discriminating against Paducah, and it was so held with reference to the town of Metropolis, which is directly across the river from Paducah, by the

District Court of the United States for the Eastern District of Illinois in the companion case of

St. L. I. M. & S. Ry. et al. v. United States,
217 Fed. 80,

wherein the Court said:

“Against neither of the complainants in this cause was there evidence before the Commission which could legally support a charge of discrimination on its part. The railroad of neither complainant touches Metropolis. Each has a 16-cent rate over its own rails from points of origion in southwestern lumber territory to Cairo. This Cairo rate, the record shows, was an abnormally low rate, forced upon these complainants by competition of other trunk lines. Neither of the complainants joins with any other railroad in making a through route and through rate to Metropolis. When lumber reaches Cairo over the line of either of the complainants, the shipper pays 16 cents per hundredweight, which is a rate that the Commission has not found excessive for that service. If the lumber is to go beyond complainants' lines at Cairo and is destined to Metropolis, it must be carried on the independent line of the Illinois Central, and the shipper must pay therefor 6 cents per hundredweight, which the Commission has not found to be an excessive charge for that service. How can it be said on this basis of fact that either of the complainants is discriminating against Metropolis? **How can any one discriminate against another whom he does not serve and with whom**

he does not come in contact? We believe that, as a matter of law, the charge of discrimination can not be brought by a locality against any railroad that does not serve that locality, either directly by its own route or by a joint arrangement with other railroads for a through route and joint rate."

This case was appealed by the United States of America and the Interstate Commerce Commission to this Court, where the appeal was voluntarily dismissed on May 26, 1916 (241 U. S. 693).

In the case of

**Penn. Refining Co. v. Western New York &
Pennsylvania R. R. Co. et al., 208 U. S.**

208, 52 L. Ed. 456,

it appeared that the defendants charged a higher rate for the transportation of oil in barrels than was contemporaneously charged by them for the transportation of oil in tank cars, and it was alleged that this constituted discrimination against the shippers of oil in barrels. Although it appeared that the Lehigh Valley, the destination carrier, was a party to the joint rates, the Supreme Court, speaking of that company, said (p. 462):

"That company was but a connecting carrier, and took the cars as they were delivered to it by the initial carrier at Buffalo for transportation to Perth Amboy. It was the duty of the connect-

ing carrier to do so, and it was not rendered liable for any alleged wrongful act of the initial carrier merely because of the adoption of a joint through rate from Titusville or Oil City to Perth Amboy, which was in itself reasonable."

The principle applied by the Supreme Court in that case is equally applicable here. If lumber is tendered to either of these appellants for transportation to Paducah it is their duty under the law to accept and transport the same and deliver it to some connecting carrier who can make delivery at Paducah. The mere fact that one of these appellants performs its duty by transporting the shipment to the end of its rails in the direction of Paducah does not make it liable, where it charges for its service no more than a reasonable rate. Nor can the connecting carrier, the Illinois Central R. R. Co., be held guilty of discrimination. It is its duty to accept and transport any such shipments which may be tendered to it by either of the appellants and it could not be held guilty of a violation of the Act to Regulate Commerce if it charged for its service no more than a reasonable rate.

To hold these appellants guilty of discriminating against Paducah would be to say that if the local charges of any carrier on the Atlantic Seaboard, together with the charges of all the connecting lines, make a lower aggregate charge to one point on the

Pacific Coast than to another under similar circumstances and conditions the originating carrier has discriminated against the point to which the higher aggregate rates apply (*Phila. & Reading Ry. v. U. S.*, 240 U. S. 335-341). Thus the originating carrier would be made liable, not only for damage caused by itself and the connecting carriers (which is the extent to which Congress has attempted to go), but also for any and all extortionate exactions, illegal practices and numerous other things which may occur in transit, and of which the originating carrier has no knowledge and over which it has no control.

To hold these appellants guilty of discriminating against Paducah under the facts in this case, is tantamount to holding that the Commission has the power to deal with all carriers subject to their jurisdiction as "one united system." This power, we submit, has not been conferred upon the Commission and it has so held.

**Sioux City Term. Elev. Co. v. C. M. & St. P.
Ry. Co., 27 I. C. C. 457, 463.**

**Chamber of Commerce of New York v. Rail-
way, 24 I. C. C. 75.**

In the latter case, it was said:

"It is urged that Boston is as dependent as is Philadelphia or Baltimore upon the differential territory for its exports and imports, and the Boston interests join in the contention that the

railroads should so adjust their rates as to insure movement of a certain or substantial part of the traffic through those ports. Neither the carriers nor the Commission has any right to undertake to so apportion the traffic between rival ports or cities. While recognizing the right of the carriers to conserve the interests of the ports and territories served by them, **we can not consider the carriers as one great and single system.** *In re Advances in Coal Rates by the Chesapeake & Ohio Ry. Co., 22 I. C. C. 604."*

III.

THERE WAS NO NECESSITY FOR THE ESTABLISHMENT OF THROUGH ROUTES AND JOINT RATES TO PADUCAH.

If it should be held by this Court, as we do not believe it will, that the Interstate Commerce Commission has power to establish joint through routes and rates against the will of a carrier not incorporated under a Federal law, but by state authority only, yet that fact would not authorize the Interstate Commerce Commission to order the establishment of such rates unless there was an urgent necessity therefor, for the reason that the consequences to the carriers of the enforced extension of their rails beyond the confines of the state or states by which they were chartered to operate and the establishment of a partnership with their connections which the establishment

by the Commission of joint through routes would create under the application of the Carmack amendment would be fraught with such grave consequences that the power, if it exists, should be sparingly exercised by the Interstate Commerce Commission.

We respectfully submit that no good ground has been shown for the establishment of through routes via Memphis; that to establish such through routes via the Iron Mountain and Cotton Belt would be to deprive these carriers of the long hauls guaranteed to them by Congress by Section 15 of the Act to Regulate Commerce; and that the Commission should decline to establish through routes to Paducah via Memphis.

There was no evidence offered at the hearing of this case to the effect that any better transportation facilities will be afforded Paducah by the establishment of through routes and joint rates than are now afforded that locality by the carriers on the combination rates, and the only possible reason that the Commission can have for establishing through routes and joint rates via Memphis is to remove an imaginary discrimination said to exist on account of the low rate to Cairo. If we are right in our contention that the Commission is powerless to establish such through routes and joint rates because the lines of the carriers, via Cairo, are not circuitous because not in excess of 115 per cent of the short-line mile-

age, then there is no reason for it to establish through routes and joint rates, because there is no complaint of the service rendered by the carriers on the combination rate and there is no necessity for establishing such through routes and joint rates, as the City of Paducah is not a shipper and there is no shipper complaining except the Paducah Cooperage Company, whose complaint is solely one of discrimination against Paducah because of the lower rate to Cairo. In the absence of a public demand for through routes and joint rates the Commission can not lawfully establish them, as it has itself in numerous cases declared; for instance, in the case of

Loup Creek Colliery Co. v. Virginian Ry. Co.,
12 I. C. C. 471, 477,

it said:

“The law does not require the Commission in all cases where no through routes and joint rates exist to establish them, but only empowers it to do so in proper cases with the manifest intent of giving effect to the general purposes of the Act to Regulate Commerce **by securing reasonable facilities to the public and preventing unreasonable and unjust rates, practices and discriminations,** and in the exercise of this authority the Commission is bound by the same considerations of justice and fairness as it is in the exercise of the rate-making power in other respects. Where neither the interest of the public nor the ends of justice as between parties directly interested

will be promoted by the establishment of through routes and joint rates and divisions thereof, a proper case for the exercise of the authority invoked has not been shown.”

In the

**Enterprise Fuel Co. v. Pennsylvania R. R.
Co., 16 I. C. C. 219, 222, 223,**

the Commission said that—

“A shipper * * * is not entitled to a through route because he may not be as conveniently served by one railroad as another. * * * The administration of this law has been placed in our hands that the public may be protected against the adoption and practice by carriers of methods inimical to the general good, and we must give to the law such interpretation as we think the Congress would apply in each individual case, taking its mind from the language which it has used.”

In

**New York Dock Co. v. Baltimore & Ohio R.
R. Co., 32 I. C. C. 568, 573,**

the Commission said:

“The law does not require us to establish through routes and joint rates in all instances where carriers have neglected or refused to do so, but does empower us to do so in proper cases, with the manifest intent of giving effect to the general purposes of the Act by **securing rea-**

sonable facilities to the public and preventing unreasonable and unjust rates, practices and discriminations.

“Where neither the interest of the public nor the ends of justice as between parties directly interested will be promoted by such establishment, a proper case for the exercise of the authority invoked has not been shown (*Loup Creek Colliery Co. v. V. Ry. Co.*, 12 I. C. C. 471, 477). Each case must be tested by the needs and conveniences of the community served.”

In the case of

**Chicago, Ottawa & Peoria Ry. Co. v. Chicago
& Northwestern Ry. Co., 33 I. C. C.
573, 576,**

the Commission said:

“There is no showing that the steam roads reaching points on the complainants’ line do not adequately serve the transportation needs of the public,”

thus evidencing their opinion that these matters be given consideration.

As the District Court for the Eastern District of Illinois has held in the case of

**St. Louis, Iron Mountain & Southern Rail-
way Co. et al. v. U. S., 217 Fed. 81-83,**

that a carrier whose rails do not reach a point against which it is claimed discrimination exists, can not be guilty of discrimination in not placing that

point on a rate parity with one reached by its own rails, no finding of discrimination by the Interstate Commerce Commission in this case could properly be made and, as we will hereinafter show that the order of the Interstate Commerce Commission is based entirely on discrimination and not on the unreasonableness *per se* of the Paducah rates, it had no power to make the order in this case. To permit it to do so would simply authorize the circumvention of the law and the neutralization of the ruling of the District Court of the United States for the Eastern District of Illinois in the case just above referred to, as respondents would be accomplishing by indirection in this case, what they can not do by direct methods, viz, have the Interstate Commerce Commission order the establishment of joint through rates to Paducah and when that is done, complain that they were discriminatory as against Cairo, for, as we have said, the whole report of the Interstate Commerce Commission in this case is based on discrimination and not unreasonableness *per se* of the Paducah rate. If the combination Paducah rate is too high, it can be reduced by the Commission on complaint made to that effect by the City of Paducah or any shipper without the establishment of

joint through rates, for the Commission has itself so said. See

**Southeastern Lumber Rates Case, 42 I. C.
C. 558,**

viz:

“We have never held, however, nor does the act provide, that an aggregate of intermediate rates may not represent a reasonable charge, whether that aggregate be of intermediate proportional rates, conditioned in their use upon a further movement of the traffic beyond, or of rates unrestricted in their application. Here all the rates of the latter class used in the construction of the through rates stand as expressly approved in the Southern Points Case, as do the lower proportional rates similarly employed in constructing the through rates from the southeastern territory, which have no other status than as parts of through rates.”

IV.

NO FINDING THAT THE PADUCAH RATE WAS UNREASONABLE.

In the absence of a finding that the Paducah rate was unreasonable *per se*, the Commission was without power to reduce or order the reduction of the then Paducah rates.

In the case of

Interstate Commerce Commission v. Stick-
ney, 215 U. S. 98, 54 L. Ed. 111, 113,
the Supreme Court of the United States said:

“The carrier is entitled to have a finding that any particular charge is unreasonable and unjust before it is required to change such charge * * *. If the * * * charge be, in and of itself, just and reasonable, it can not be condemned or the carrier required to change it on the ground that it, taken with prior charges of transportation over the lines of the carrier or of connecting carriers, makes the total charge to the shipper unreasonable.”

In the case of

Interstate Commerce Commission v. Louisville & Nashville Railroad Company,
227 U. S. 88, 57 L. Ed. 431, 433,

the Supreme Court said:

“Under the statute the carrier retains the primary right to make rates, but if, after hearing, they are shown to be unreasonable, the Commission may set them aside and require the substitution of just for unjust charges. **The Commission’s right to act depends upon the existence of this fact.**”

In the case of

Atlantic Coast Line v. Interstate Commerce Commission, 194 Fed. 448, 457,

the Commerce Court said:

“Before an existing rate may be condemned there must be a finding of some sort that it is unjust and unreasonable.”

The law being thus clearly settled that the Commission has no authority to reduce an existing rate unless it has found it to be unreasonable, the question arises:

Has the Commission made such a finding in this case?

It is clear from a reading of the opinion of the Commission in the first case that the Commission did not make any such finding there, but only found that the maintenance of a higher rate to Paducah than to Cairo constituted discrimination. In the first paragraph of its opinion the Commission uses the following language:

“From all this territory the short-line distance is practically the same to Paducah as to Cairo; such slight differences as exist are in favor of Paducah. Nevertheless, the rates on lumber are from 1 to 6 cents per 100 pounds higher to Paducah than to Cairo. It is alleged that at least, **in so far as the rates to Paducah exceed those to Cairo**, they are unjust and unreasonable and unduly discriminate against Paducah to the undue preference and advantage of Cairo.”

On page 591 of its opinion in that case the Commission uses the following language :

“It is also argued that the center of lumber production west of the Mississippi has, since 1909, receded over 100 miles southward, which, it is

stated, has had the effect of lowering the average per ton mile earnings of the carriers of lumber traffic. **It is obvious, however, that while the latter argument might bear upon the reasonableness of the rates to Paducah and Cairo, it has no bearing upon the question of their relative adjustment."**

In the latter quotation, as we read it, the Commission expressly disclaims any intention of passing on the reasonableness of the Paducah rates, but states that it is only considering the Paducah and Cairo rates relatively.

Again on page 592 of its opinion the Commission says:

"We believe that since the short-line distances from points west of the Mississippi and south of the line of the Chicago, Rock Island & Pacific, from Memphis to Little Rock, are not greater to Paducah than to Cairo, defendants should be required to establish from points or groups substantially equi-distant from Cairo and Paducah rates to Paducah over the present routing, unless they elect to do so over the more direct route via Memphis, no higher than the rates contemporaneously maintained from the same points to Cairo. The rates to Paducah from points west of the river should not be lower than those to Cairo, because in hauling from west-side points to Paducah the Mississippi must be crossed as well as in hauling to Cairo * * *."

And again:

“The defendants who operate west of the Mississippi River will be required to maintain rates to Paducah from substantially equi-distant points or groups in Arkansas and Louisiana west of the river, on and south of the line of the Chicago, Rock Island & Pacific, from Memphis to Little Rock, no higher than those contemporaneously maintained from the same points to Cairo.”

In the opinion which is the basis of the order involved in this proceeding, but two references are made to the reasonableness of the rate to Paducah. On page 720 of its opinion the Commission says:

“It is again alleged that the rates on lumber to Paducah are unreasonable and unjustly discriminatory.”

No further reference is made to the reasonableness of the rate until, on page 725 of its opinion, the Commission says:

“The evidence abundantly confirms our previous finding that the present rates to Paducah are unjustly discriminatory and give an undue preference to Cairo. In spite of Paducah’s favorable location, and in spite of the fact that the distances to Paducah via Memphis are not greater than the distances to Cairo, the rates to Cairo have been much lower than the rates to

Paducah, and the lumber industry at the latter point has not developed nearly as rapidly as at Cairo. At least two companies have recently moved their plants from Paducah to Cairo because of the more favorable rates to the latter point.

“We adhere to our former finding that the defendants unduly discriminate against Paducah to the undue preference and advantage of Cairo by the maintenance of their present rates on logs and lumber from the producing points here involved. We further find that the rates on logs and lumber to Paducah from points of origin in the territory involved **are unreasonable to the extent that they exceed the present rates to Cairo.**”

Certainly neither of these statements is equivalent to a finding that the rates charged for the transportation of lumber and logs to Paducah are excessive.

While the Commission does use the word “unreasonable” in the last quotation, it only says that the Paducah rates are unreasonable as compared with the Cairo rate and it is plain that they were not speaking of the reasonableness of the Paducah rate *per se*, but had in mind principally the relative adjustment.

A similar order to that made by the Commission in this case was approved by the Circuit Court in the case of

**East Tennessee, Etc., Ry. Co. v. I. C. C., 181
U. S. 26,**

but this Court held it was in error, saying:

“The decree which was entered, however, did not declare the rates charged to Chattanooga to be unreasonable, but simply affirmed the order of the Commission, directing that no greater sum be charged for the carriage of freight to Chattanooga, the shorter, than was exacted to Nashville, the longer distance. As we have already shown, such a decree is not responsive to the conclusion that the rates to Chattanooga were in and of themselves unreasonable, since the right to continue to exact them was sanctioned, provided the traffic to Nashville was either abandoned or the rate to Chattanooga made the same as to Nashville.”

So in this case, we would be complying with the order of the Commission by raising the Cairo rate to a level with the Paducah rate, which demonstrates that the Commission did not find the Paducah rate to be unreasonable *per se*. Moreover, Mr. Norman, the attorney for the Paducah Board of Trade, on page 273 of the record, expressly disclaimed any purpose of attacking the reasonableness *per se* of the Paducah rate, as will be noted from the following colloquy:

“Mr. Bryan: If rates are just and reasonable, there is no reason why they should be reduced.

Mr. Norman: Mr. Bryan, **this is not an attack on the reasonableness of your rates.** It is not the desire, as I understand it, and as I heard it stated by the complainants, to reduce your reve-

nue at all. **What they want to do is to be put on an equality with Cairo.**

Mr. Bryan: By advancing the rate to Cairo?

Mr. Norman: If you are inclined to do that by advancing the Cairo rate, all well and good."

V.

The Interstate Commerce Commission ignored the competitive conditions of water and rail competition shown by the evidence as existing at Cairo, which did not exist at Paducah, which constituted such dissimilarity of circumstances and conditions as ought to have influenced the District Court to refuse to approve the Interstate Commerce Commission's order.

It is manifest from the mere reading of the Interstate Commerce Commission's report in this case, that its finding that Paducah was entitled to the Cairo rate and the establishment of through routes and joint rates via Memphis were based solely on the ground that Paducah was practically equidistant with Cairo from the southwestern lumber producing territory in Arkansas and Louisiana. That fact alone did not justify the Commission in finding that the Cairo rate was discriminatory and it was the duty of the District Court to see that the Interstate Commerce Commission duly considered the water and rail

competition shown by the record to exist at Cairo, which the record did not show existed at Paducah.

Ducker's Exhibit No. 1 (Rec., p. 182) shows that out of 12,095 cars of lumber received by sixteen representative lumber companies doing business in the City of Cairo during the year 1913, 2,773 cars, or almost one-fifth thereof, were received by river, and Ducker's Exhibit No. 2 (Rec., p. 183) shows that out of 9,146 carloads received by the same firms during the year 1914, 2,525 carloads, or almost one-fourth, came in by water, whereas the record is silent as to the amount of river traffic, if any, that came into Paducah during the same or any other period of time. That the Commission was not at liberty to ignore this evidence as it did has been too frequently held by this Court and the Commission itself to require other than a reference to a few of the authorities so holding, viz:

- I. C. C. v. Alabama Midland Railway, 161 U. S. 144;**
- Texas & Pacific Ry. v. Interstate Commerce Commission, 162 U. S. 233 and 235;**
- Flint & Walling Mfg. Co., 14 I. C. C. 521;**
- South Atlantic Waste Co. v. Ry., 22 I. C. C. 296;**
- Montgomery Frt. Bureau v. Ry., 17 I. C. C. 521;**
- Monroe Progressive League v. Ry., 15 I. C. C. 536.**

In the **Alabama Midland case**, *supra*, there was passed upon a decision of the Commission that the competition of river lines of transportation was not a factor to be considered in determining whether property transported over the same line is carried under "substantially similar circumstances and conditions" as that phrase is found in the Fourth Section of the Interstate Commerce Act. The decision was declared to be an erroneous construction of the Act.

In

**Texas & Pacific Railway Co. v. I. C. C., 162
U. S. 197,**

it likewise held that the Commission erroneously refused to consider ocean competition as constituting a dissimilar condition and as justifying a difference in rates between import and domestic traffic. The Interstate Commerce Commission in the case of

**Flint & Walling Mfg. Co. v. V. G. R. & I.
Ry. Co., 14 I. C. C. 521,**

recognized the force of water competition by saying:

"The Louisville & Nashville insists that, owing to competition by river between Louisville and Nashville and to other competitive conditions at Nashville, it is forced to charge a lower rate between those points than it otherwise reasonably might. The testimony in the record before us tends to support this contention, and this situation has been fully developed in pre-

vious investigations before this Commission. We find that these competitive conditions exist, and this being so, we must hold that the rate to Nashville is not of necessity a standard by which the rate to Gallatin can be measured, nor is the Louisville & Nashville necessarily in violation of the Fourth Section in charging a higher rate to Gallatin, the intermediate point, than is charged to Nashville, the more distant point. The principle underlying this rule and the cases by which it is supported are too familiar to require citation here."

And, again, in the

Greater Des Moines Committee Case,
42 I. C. C. 71,

it said:

"A depressed rate at a recognized gateway will not serve as a fair index of rates justly applicable at Des Moines; and the single element of distance which is persistently intoned in this complaint, with occasional allowances for terminal and line costs, respectively, but to the total exclusion of relative natural and commercial competitive conditions, density of traffic, primary markets, main-line versus branch-line service, and blanketed rate territories does not suffice wholly to substantiate the allegations made of illegal disadvantage or undue or unjust discrimination."

And in the

**Monroe Progressive League Case,
15 I. C. C. 536,**

it said:

“When the first railroad was built from St. Louis to New Orleans it was obliged to make rates that would compete with the river rates, and when additional lines were built they were not able to make any higher rates than those which had already been established and which were controlled by the competition of the river.

Rates from St. Louis by river had been made the same to Vicksburg and Natchez as to New Orleans, and here again the railroads were obliged to adopt the adjustment established before their advent. As a result, New Orleans, Natchez and Vicksburg and other Mississippi River points have ever since enjoyed the advantage of rates established as a result of the controlling competition of water carriers on the Mississippi River.

Under numerous decisions of the courts and of this Commission, controlling competition, especially of water carriers, such as exists at New Orleans, Natchez and Vicksburg, justified lower rates to those points than to intermediate points where the same competition does not exist and control. *Bovaird Supply Co. v. A. T. & S. F. Ry. Co. et al.*, 13 I. C. C. Rep. 56; *Indianapolis Freight Bureau v. P. R. R. Co. et al.*, 15 I. C. C. Rep. 567; *Louisville, Etc., R. R. Co. v. Behlmer*, 175 U. S. 670, and *East Tennessee, Etc., Ry. Co. v. I. C. C.*, 181 U. S. 18.

Complainant argues that, inasmuch as low rail rates have greatly reduced the steamboat traffic on the Mississippi River, water competition no longer exists at Vicksburg, and that, therefore, justification for the lower rates all-rail from St. Louis to Vicksburg through Monroe is removed. The river, however, is still at Vicksburg, and any increase in the rail rates sufficient to induce the establishment of additional steamer lines would transform the diminished but strongly potential water competition into augmented active water competition which, once established, must continue (*Interstate Commerce Commission v. A. M. Ry.*, 168 U. S. 172)."

To the same effect is **Fourth Section Violations in the Southeast, 32 I. C. C. Rep. 61** (1914).

The Commission likewise ignored the fact that the Cairo rate was an abnormally low rate produced by the intense rail competition at that point, which did not exist at Paducah. Ducker's Exhibit No. 3 (Rec., p. 184) shows that there were 26,281 carloads of lumber and forest products reconsigned at Cairo during the years 1913 and 1914 by the Illinois Central, Mobile & Ohio and Big Four Railroads. How much more was reconsigned there that came in by the heavy lumber carrying lines of the west side, viz, the Iron Mountain, Cotton Belt and Rock Island, the three appellants in this case, does not appear, nor is there anything in the record to show the volume of

the lumber traffic into or through Paducah, which latter city the record shows is on branch lines of the Illinois Central and Nashville, Chattanooga & St. Louis Railways, the latter of which is an east and west line, which does not penetrate the lumber producing section here in question. A mere glance at the map of those two roads will demonstrate that fact. The service to Paducah is therefore branch-line service, whereas that to Cairo is all trunk line service. Moreover, the record shows that Paducah is served only by two lines from the South, viz, the branch lines of the Illinois Central and Nashville, Chattanooga & St. Louis Railways aforesaid, and has an outlet to the North only via the Illinois Central and Burlington lines, which do not reach Central Freight Association or Atlantic Seaboard territory, but serve only points west of the Chicago line, whereas Cairo is the terminus of two of the heaviest lumber carrying roads west of the Mississippi River, viz, the Iron Mountain and Cotton Belt, and is reached by the Rock Island in conjunction with the Illinois Central. The two heaviest lumber carrying roads east of the Mississippi River from this producing territory, viz, the Illinois Central (and its affiliated line, the Y. & M. V. R. R., which is owned by it) and the Mobile & Ohio Railroads, pass through Cairo, the one reaching Chicago and St. Louis territory and the other St. Louis territory. In addition to

these two east side lines, which pass through Cairo northbound, the Big Four reaches it from the North, and serves practically all of the Central Freight Association and Atlantic Seaboard territory. The record shows that lumber and its products constitute from 33 to 35% of the Iron Mountain tonnage (Rec., p. 178) and 40% of the Cotton Belt tonnage (Rec., p. 147), and the Commission itself in the case of

Sondheimer v. Ill. Cen. R. R., 17 I. C. C. 67,
found that

“About 50% of the lumber received at Cairo comes by barge from points on the Mississippi River south of Memphis.”

And Witness Bryan also testified. (Rec., pp. 265-266) He also stated, on page 268 of the record, that “Cairo receives vast quantities of lumber by water and Paducah receives none,” and on page 269 of the record, he states: “I have given you one other good reason, that Cairo hauls three or four thousand carloads of that particular kind of lumber into Cairo by water in a year and a half or two years, and Paducah does not get a single car. I consider that a very potent reason.” See, also, testimony of Witness Watson (Rec., p. 161). Moreover, the record on this point (Rec., p. 140) conclusively shows that Cairo is the basing point for all northbound traffic from the southwestern lumber producing territory here in

question, as was stated by the carriers' witnesses, on pages 274, 276 and 278 of the record. The conclusion is, therefore, irresistible that the Interstate Commerce Commission arbitrarily ignored these elements of water and rail competition as they did the ocean competition in the Texas & Pacific case, 162 U. S. 197, and based its ruling solely on a mileage basis, which it had no right to do, and the fact that the District Court did not correct this error, by annulling its order, as it was its duty to do, was clear error, for which its judgment should be reversed.

The Interstate Commerce Commission has but recently held that Cairo is the logical gateway to the Central Freight Association territory from the lumber producing territory, both east and west of the Mississippi River, here in controversy, by saying in the

**Southeastern Lumber Rate Case, 42 I. C. C.
556,**

viz:

"The predominance of Cairo and Thebes as basing points for this lumber is said to be due to the intense competition centering there of lines from the producing territories east and west of the river. It is the most direct and logical gateway for most of the traffic of the west side lines to the Central Freight Association territory, and also for much of the traffic from the east side."

Thus confirming what it said in an earlier case,
viz,

**Sondheimer Co. v. Illinois Central R. R., 17
I. C. C. 64,**

viz:

“Cairo, because of its location and its rail facilities to Arkansas lumber producing points, was the short line to all the Northern and Eastern destinations and secured practically all the Northeastern Arkansas lumber traffic.”

That its rates are abnormally low has been declared by the Commission itself since its decision in I. & S. Docket 520, so largely relied upon by the District Court in deciding this case. I. & S. Docket No. 520 was decided on July 12, 1915, and is reported in 34 I. C. C. 652, whereas the Commission in the **Memphis Freight Bureau Case, 39 I. C. C. 303**, which was decided on the 9th day of May, 1916, about a year after its decision in I. & S. 520, wherein it affirmed its former holdings to the effect that the Cairo rate, on account of the intense competitive conditions, both by water and rail, produced an abnormally low rate, by saying:

“The advantageous position which Cairo occupies as a distributing center for lumber moving from the south to the north, and the competitive conditions which have induced the establish-

ment of relative lower rates to that point than to other Ohio and Mississippi River crossings have been recognized in our decisions in *Lumbermen's Exchange v. A. & S. R. R. Co.*, 24 I. C. C. 220, and *Lumber Rates from the south to Ohio River Crossings*, 25 I. C. C. 50",

and its confirmation on **November 8, 1916**, in the

Omaha Lumber Case, 41 I. C. C. 573,

of its ruling in the **Chicago Lumber & Coal Case**, 16 I. C. C. 323, to the effect that carriers of lumber west of the Mississippi River are entitled to a rate of 2 cents per hundred pounds higher than those east of the river, there can be no doubt about the reasonableness *per se* of the Paducah rates prior to the decision in the Paducah case. The unreasonableness of those rates, if that expression may be used, is one not arising from any inherent quality of the rate itself, but solely because of its relationship to the Cairo rates which, as we have said, this Commission has declared since its decision in the former Paducah case, are abnormally low because of the competitive conditions existing at Cairo which we claim do not exist at Paducah, and that (see *Metropolis* opinion quoted *ante*) Paducah is therefore not entitled to the low competitive Cairo rate. This ruling in the *Memphis* case, *supra*, confirms its previous opinions in which it repeatedly recognized the fact that the Cairo rate is an abnormally low one, on account of the in-

tense competition encountered at that point, in the following cases:

Chicago Lumber & Coal Co. v. Railways, 16 I. C. C. 325;

Lumbermen's Exchange of St. Louis v. Railways, 24 I. C. C. 223;

I. & S. Docket No. 542, 25 I. C. C. 57;

I. & S. Docket No. 184, 26 I. C. C. 471;

St. L., I. M. & S. Ry. v. U. S., 217 Fed. 81-83.

Counsel for the carriers undertook at the hearing before the Commission, to demonstrate to it by evidence that the Cairo rate was a highly competitive one and an abnormally low one, but was deterred from so doing by the action of the Examiner, as shown by the following colloquy, appearing on page 150 of the record:

“Mr. Haid: I presume, Mr. Examiner, it is not necessary for me to ask the witness with reference to the findings of the Commission as to the reasonableness of the Cairo rate, the fact that it is a competitive rate, etc., but the Commission's decisions can be referred to in a brief.

Examiner LaRoe: You mean the findings of the Commission, that the rate to Cairo is a competitive rate?

Mr. Haid: Yes, sir.

Examiner LaRoe: That has been so frequently stated by the Commission that I would not go into that very much if I were you.”

VI.

**CONSTRUCTIVE MILEAGE OF CAIRO BRIDGE
NOT AN ELEMENT TO BE CONSIDERED IN
DETERMINING WHETHER ROUTE UNREA-
SONABLY LONG.**

Our next contention is that the constructive mileage of the bridge at Cairo could not properly be considered by the Commission in determining whether the route to Paducah via Cairo is unreasonably long as compared with the route via Memphis. While it might be proper in passing on the reasonableness of a **rate** to consider the cost of a bridge and make an allowance therefor on a constructive basis, where the law provides, as does Section 15 of the Act to Regulate Commerce, that the Commission can not require a carrier to establish a through route which embraces substantially less than the entire length of its line, unless to permit it to use the entire length of its line in such through route would make the through route **"unreasonably long as compared with another practicable route,"** the Commission is limited to a comparison of the mileage only. Unless there is some proof that the crossing of the bridge takes as long as the transportation of freight over 112 miles of road or for some other reason affects the service to an extent equal to 112 miles of road haul, the

Commission has no power to take such constructive mileage into consideration in determining whether or not a route is unreasonably long as compared with another route. There was no such evidence in this case.

VII.

NO EVIDENCE BEFORE COMMISSION OF CONSTRUCTIVE MILEAGE OF CAIRO BRIDGE.

The next ground upon which we contend the Commission's order should be held void is that there was no evidence before the Commission bearing upon the constructive mileage of the bridge at Cairo. It is apparent from the two decisions of the Interstate Commerce Commission that the Commission gave considerable weight to the fact that in reaching Paducah via Cairo the Illinois Central bridge at Cairo must be crossed, while in reaching Paducah through Memphis it is not necessary to cross the Ohio River. The Commission says, in its first report, that:

“It has been frequently maintained by the carriers that the bridge across the Ohio River at Cairo should be considered constructive mileage, and 112 miles has been given as a correct equivalent.”

This statement is again referred to in the second

report of the Commission. The Commission, however, does not say that in passing upon the reasonableness of rates it has ever treated this bridge as equal to 112 miles of road haul and made allowances accordingly. Nor do they say that any such evidence has been submitted in this case. There was no evidence submitted by either complainant or the carriers in this case of the constructive mileage of the Cairo bridge, and under the following authorities the Commission had no right to consider it:

**Interstate Commerce Commission v. L. & N.
R. R., 227 U. S. 91;**

Florida East Coast Ry. v. U. S., 234 U. S. 167.

The fact that the river has to be crossed at Cairo is immaterial in any event, however, from what the Commission said in the

**Memphis Freight Bureau Case, 27 I. C. C.
516,**

viz:

“Complainant’s attack upon the reasonableness of the rates to Memphis remains to be considered. The showing upon this point begins with a comparison with the rate of 14 cents from the same points of origin to Cairo. Complainant also directs attention to the fact that to enter Cairo a bridge service is necessary, the charge for which by the Illinois Central Railroad, when occasion arises for separate statement, is 2 cents

per 100 pounds. So far as the line haul is concerned, therefore, complainant argues that the rate to Cairo, less the bridge charge, is actually 1 cent below the charge to Memphis. The fact that the rate of 14 cents per 100 pounds applicable to Cairo applies also on shipments to points south of this bridge, which, therefore, do not require bridge service, makes it impossible to follow complainant's argument on this point."

This likewise answers the District Court's argument that two bridges have to be crossed at Cairo to reach Paducah.

VIII.

THE COMMISSION CAN NOT ORDER THE ESTABLISHMENT OF THROUGH ROUTES VIA MEMPHIS IN THE ABSENCE OF A SPECIFIC FINDING THAT THE ROUTES THROUGH CAIRO ARE UNREASONABLY LONG AS COMPARED WITH THE ROUTES THROUGH MEMPHIS.

Section 15 of the Act to Regulate Commerce limits the jurisdiction of the Interstate Commerce Commission to establish through routes and joint rates by the following proviso:

"In establishing such through route, the Commission shall not require any company without

its consent to embrace in any such route substantially less than the entire length of its railroad and of any intermediate railroad operated in conjunction and under common management or control therewith which lies between the termini of such proposed through route, unless to do so would make such through route unreasonably long as compared with another practicable through route which could otherwise be established."

This language is so plain as not to leave room for argument on the question whether, or not the Commission must make a finding that a route is unreasonably long as compared with another practicable route, before it can require a carrier to establish another route which will embrace substantially less than the entire length of its railroad between the termini of the proposed through route.

For the purpose of showing, that to require these appellants to establish through routes to Paducah via Memphis would require them to embrace in such route substantially less than the entire length of their respective railroads lying between the termini of such proposed through route, appellant, St. Louis Southwestern Railway Company, offered evidence that it has no rails of its own to Memphis, but that traffic transported over its line to or through Memphis is delivered by it to the Iron Mountain at Fair Oaks, Ark., which is sixty miles west of Memphis,

from whence it is transported by the Iron Mountain to Memphis. The distance from Fair Oaks to Cairo over the line of the Cotton Belt is 163 miles, and the Cotton Belt would be short-hauled to that extent on all traffic moving to Paducah through Memphis. The Cotton Belt also offered in evidence before the Commission Watson's Exhibit No. 7 (Rec., p. 187, here reproduced), which shows, among other things, the distance via its line from various representative producing points to Cairo.

A similar exhibit was offered showing comparative distances from Iron Mountain points of production. That exhibit, known as Watson's Exhibit 8, is here reproduced (Rec., p. 187):

WATSON'S EXHIBIT NO. 8.
Exhibit Showing Distances to Paducah, Ky., From Lumber Manufacturing Points West of the Mississippi
River, Via Various Routes.
From Points on the St. Louis, Iron Mountain & Southern Ry.

FROM	TO	VIA		Thebes	Excess Thebes over Memphis & St. L.	Excess Memphis over and N. C.
		Memphis	115% of Distance Via Memphis			
Lake Charles	Paducah	602	692.3	663	61	2
Kinder	Paducah	568	653.2	629	39	2
Alexandria	Paducah	503	578.5	564	61	2
Monroe	Paducah	406	466.9	467	61	2
Dermott	Paducah	320	368	381	61	2
Prescott	Paducah	412	473.8	423	11	52
Arkadelphia	Paducah	380	437	392	12	51
Warren	Paducah	359	412.8	420	61	2
Nashville	Paducah	453	520.9	464	11	52
Crossett	Paducah	368	403.2	428	60	3
Marianna	Paducah	218	250.7	278	60	3
Huttig	Paducah	421	484.1	483	62	1

The third column of these exhibits shows the distance as the lines of the Cotton Belt and Iron Mountain formerly operated, to wit, via Bird's Point, thence by river transfer to Cairo. The fourth column shows the distances as they now operate. Although those lines expect to resume operations via Bird's Point in the not distant future, inasmuch as they do not now operate in that manner, we may eliminate the third column from consideration.

If, as above stated, the Cotton Belt would be short-hauled 163 miles if it is compelled to operate through routes via Memphis, its haul from the producing points shown on Exhibit 7 would be reduced not less than 35% in any case and as much as 75%.

The evidence also showed that if the Iron Mountain is compelled to operate through routes via Memphis it would be short-hauled approximately 168 miles, which, from the producing points shown on Exhibit 8 would be in all cases not less than 26% and as much as 80% of the distance between the point of origin and the end of its rails—Cairo.

The question then arises, would the establishment of a through route via Cairo be unreasonably long as compared with another practicable through route which could otherwise be established?

On Exhibits 7 and 8 we have shown the distances from representative points on the Cotton Belt and Iron Mountain to Paducah via Memphis, via Thebes,

the excess of the Thebes route over the route via Memphis and the Illinois Central, and the excess of the route via Memphis and the Nashville, Chattanooga & St. Louis over the Thebes route.

Exhibit No. 7 shows that from producing points on the line of the Cotton Belt the mileage to Paducah via Thebes exceeds the mileage via Memphis and the Illinois Central R. R. by only 26 miles, with one exception, where the mileage via Memphis and the Illinois Central exceeds that via Thebes by 29 miles. This exhibit also shows that from Cotton Belt producing points the mileage via Memphis and the N., C. & St. L. exceeds that via Thebes by 37 miles in all cases, except one, where the Memphis mileage exceeds the Thebes mileage by 92 miles.

Watson's Exhibit No. 8 shows that from producing points on the Iron Mountain the mileage via Thebes exceeds the mileage via Memphis and the Illinois Central by from 11 to 62 miles, but the mileage via Memphis and the N., C. & St. L. R. R. exceeds the Thebes mileage by from 1 to 52 miles.

An exhibit similar to Exhibits 7 and 8 was introduced showing comparative distances from Rock Island producing points. That exhibit, known as Watson's Exhibit No. 9, is here reproduced.

WATSON'S EXHIBIT NO. 9.
Exhibit Showing Distances to Paducah, Ky., From Lumber Manufacturing Points West of the Mississippi River, Via Various Routes.
From Points on the Chicago, Rock Island & Pacific Railway.

FROM	TO	VIA			Thebes	Excess	
		115% of	Distance Via	Cairo		Thebes over	Memphis and N.C. & St.L.
		Memphis	Memphis			Ill. Cent. and	Thebes over
Eunice	La.	663	727.9	672.6	672.6	39.6	23.4
Turkey Creek	La.	606.8	697.8	646.4	646.4	39.6	23.4
Winnfield	La.	530	609.5	569.6	569.5	39.6	23.4
Pyburn	La.	519.9	597.8	559.5	559.5	39.6	23.4
Hodge	La.	504.9	580.6	544.5	544.5	39.6	23.4
Dubach	La.	471.8	542.5	511.4	511.4	39.6	23.4
Randolph	La.	450.3	517.8	489.9	489.9	39.6	23.4
El Dorado	Ark.	431.4	496.1	471	471	39.6	23.4
Benton	Ark.	326.4	375.3	366	366	39.6	23.4
Little Rock	Ark.	300.1	345.1	339.7	339.7	39.6	23.4
Brinkley	Ark.	236.2	271.6	275.8	275.8	39.6	23.4

Watson's Exhibit No. 9 shows that from Rock Island points the mileage via Cairo (and in this connection we might state that the Thebes mileage shown on this exhibit should have been omitted because the Rock Island does not operate via Thebes) exceeds the mileage via Memphis and the Illinois Central (through Fulton by 39.6 miles, but the mileage via Memphis and the N., C. & St. L. exceeds the Cairo mileage by 23.4 miles.

The slight excesses of the Thebes mileage over the mileage via Memphis and the Illinois Central, it will be seen, is insignificant.

The Interstate Commerce Commission in applying the provisions of the Fourth Section of the Act to Regulate Commerce has uniformly held that where a circuitous route desires to meet at a competitive point, the rates of the direct lines, and carry higher rates to intermediate points, the Commission will grant it permission to do so if the circuitous route exceeds the direct route by more than 115% (**Sugar Rates Case, 31 I. C. C. 502**; *In re* 4th Section, 24 I. C. C. 196; *Edwards Lumber Co.*, 25 I. C. C. 93; *Okla. Cottonseed Co.*, 39 I. C. C. 512; *Iowa Proportional Class Rates*, 34 I. C. C. 280). For purposes of comparison, therefore, we have shown in the second column of Watson's Exhibits 7, 8 and 9, 115% of the mileage via Memphis and the Illinois Central. As to the Cotton Belt, Exhibit No. 7, shows that in no case does

the mileage to Paducah via Thebes equal 115% of the mileage via Memphis and the Illinois Central.

As to the Iron Mountain, Exhibit No. 8, shows that in only five instances does the mileage via Thebes exceed or equal 115% of the mileage via Memphis and the Illinois Central and in those five cases the difference is slight.

As to the Rock Island, Exhibit No. 9, shows that in no case does the mileage via Cairo equal 115% of the mileage via Memphis and the Illinois Central.

Compared with rulings made by the Commission in other cases the routes of the Iron Mountain and Cotton Belt via Thebes and the route of the Rock Island via Cairo to Paducah are not unreasonably long. For instance, in the case of **Hughes Creek Coal Co. v. K. & M. Ry. Co.**, 29 I. C. C. 671, the Commission held that a route 289 miles long was not unreasonable as compared with another 241 miles long, a difference of 17 per cent.

In the case of

**Superior Commercial Club v. Great Northern
Ry. Co., 24 I. C. C. 96,**

the Commission held that differences in distance ranging from 50 miles on a haul of 411 miles, 90 miles on a haul of 500 miles, and 151 miles on a haul of 647 miles did not constitute the longer routes unreasonably long. For convenience we here quote from

pages 112 and 113 of the opinion of the Commission in that case:

“The law authorizes the Commission to establish through routes, but provides that in doing so it shall not require any company without its consent to embrace in such route substantially less than the entire length of its railroad and of any intermediate railroad operated in conjunction and under a common management or control therewith which lies between the termini of such proposed through routes, unless to do so would make such through route unreasonably long as compared with another practicable through route which could otherwise be established. To require these defendants to establish through routes via the Great Northern crossings as prayed would require them to include in such routes substantially less than the entire length of their lines between the termini of such routes. The differences in distances from points of origin on the Milwaukee, range from 50 miles on a haul of 411 miles, to 151 miles on a haul of 647 miles; those on the Northwestern range from about 90 miles on a haul of 500 miles to 151 miles on a haul of 647 miles.

“The Omaha is the short line from the greater number of its local points; from the points that would be affected by through routes via Great Northern crossings the distance via its own line is about 78 miles greater on a haul of 450 miles. It is testified that there is some delay to this traffic in passing through Minneapolis, and from

that it is argued that the routes via Minneapolis are unreasonably long and unsatisfactory.

“The law contemplates protecting a carrier in its long haul on the traffic which it originates. This traffic is not perishable; it moves in large volume and continuously, and, all things considered, we do not think under the circumstances here shown that the routes via Minneapolis are unreasonably long or that they afford an unreasonable service, or that these defendants may properly be required to establish the through routes as prayed for.”

Another decision of the Commission which is peculiarly applicable to this case is that of the **Pacific Coast Lumber Manufacturers Association v. Northern Pacific Ry. Co.**, 14 I. C. C. 51, at page 57, in which the Commission, speaking of some of the Pacific Coast lumber lines, said:

“They have penetrated these forests with branch lines which are of no value except as they originate this traffic. They have put themselves in shape to handle this business over practically the entire length of their lines. They have done this upon the theory that they were to be allowed to carry this traffic over their own lines, and they could not afford to construct their originating railroads and to establish and maintain the rates which have been maintained unless they were permitted the long haul upon this business. They could not afford to operate upon the same

basis if they were obliged to deliver it over to the Union Pacific at Portland. It is very doubtful whether the common interest of the public and the railway does not require that these several trans-continental lines shall be allowed to handle this traffic which they originate.

“Justice dictates the same conclusion. These forests of Western Washington will furnish the present output for a half century to come. These railroads were constructed upon the theory that in so far as they could they would be allowed to control this traffic. The traffic itself is of enormous value. It furnishes an east-bound loading, so that today the movement of empty cars is west. It converts the operation of these roads from what would otherwise be an unprofitable into a highly profitable result. Can it be just to take away this traffic from these lines? Is it not their property, to which they are entitled as much as they are to the right to impose a reasonable rate? Certainly the first consideration is the public interest; but if these lines furnish satisfactory transportation facilities upon which this lumber can be moved to Eastern markets, is it not their right to carry it there?”

There can be no question that the Southwestern lumber producing lines have done exactly what the Commission said the Pacific Coast lines did in the Western territory, and the Commission long ago recognized this fact in the case of **Chicago Lumber & Coal Company v. Tioga Southeastern Railway Com-**

pany et al., 16 L. C. C. 332, in the following language:

“It is shown that when the yellow-pine production in the territory involved began that it encountered strong competition in the woods of the Northwest, and later with the product of the Pacific coast. Prejudice existed against yellow pine because it was softer than some of the competitive woods, and because it was regarded by many as inferior to them. Without favorable transportation facilities and rates it was difficult, if not impossible, at that time to develop the industry. It is admitted that the carriers co-operated with the lumbermen and were important aids and factors in opening and establishing permanent markets for the yellow pine.”

Certainly, in the absence of evidence that these lines do not furnish satisfactory transportation facilities via Cairo, the Commission must recognize their right to the maximum haul.

It was recognized by the United States District Court for the Eastern District of Illinois, in the case of

**St. Louis, Iron Mountain & Southern Railway
et al. v. U. S., 217 Fed. 84, 1. c.,**

wherein it was said:

“The only way that the complainants could avoid giving such an affect to the order would be

for them to divert their traffic from their own rails to Memphis, and thus surrender a substantial part, probably one-half, of the average haul on their own rails. Even in establishing through routes with through rates, in proper proceedings looking to that end, the Commission can not deprive a carrier of the benefit of a full haul over its own line, unless there is a finding, based, of course, upon adequate evidence, that the haul over the entire distance would make the through route unreasonably long. As a matter of law we therefore hold that, on the record before the Commission, there was no authority to compel the complainants to divert the traffic from their own lines and turn it over to other lines through the Memphis gateway.

“We are further of the opinion that the Commission erred in matter of law in failing to give effect to the manifest fact that the Cairo rate in and of itself was abnormally low, due to competition of other trunk lines and to competition of other points of origin of the lumber traffic. We say ‘other points of origin’ because, in our judgment, territory extending from Georgia to Texas can not justly be viewed as one and the same point of origin of traffic to Cairo and Metropolis.”

It will be noted that although the differences in the distance in that case exceeded the differences in this case, yet the Commission said:

“We do not think under the circumstances

here shown that the routes via Minneapolis are unreasonably long or that they afford an unreasonable service."

Many other like decisions have been rendered by the Commission which we might refer to, but they would be merely cumulative and we do not care to unduly burden the Court with them.

Evidently for the purpose of lengthening the haul via Cairo, the Commission in its first opinion, at page 591, said:

"The haul to Paducah via Cairo necessitates crossing both the Mississippi and the Ohio Rivers, the former at Thebes, Ill., and the latter at Cairo, while the haul to Paducah via Memphis does not necessitate crossing the Ohio. It has been frequently maintained by the carriers that the bridge across the Ohio River at Cairo should be considered constructive mileage and 112 miles has been given as a correct equivalent. From this it is evident that the route to Paducah via Cairo is, in the language of Section 15 of the Act, 'unreasonably long as compared with' the direct route to Memphis,"

and in its second opinion says (p. 722):

"In computing these distances via Thebes, however, no allowance was made for the constructive mileage of the Cairo bridge. In our previous report we observed that in reaching Pa-

ducah via Thebes it is necessary to cross both the Mississippi River and the Ohio River, while only the former must be crossed if the Memphis route is used. In a number of recent cases the carriers have maintained that the bridges spanning these rivers, and especially the one at Cairo, are expensive, and that the cost of their construction and maintenance should be reflected in the rates. It is clear, at any rate, that in determining the relative reasonableness or practicability of two routes the operating conditions are entitled to consideration."

In the first place there was no evidence in either of these cases with reference to the constructive mileage of the Cairo bridge and it is one of our contentions, which we will later refer to, that the Commission had no right to take that constructive mileage into account; but confining our attention at this time to the point made by the Commission—How can the cost of the bridge enter into the determination of the question whether the route via Cairo is unreasonably long? The Commission does not find, nor has it been contended by the Paducah Board of Trade in this case, nor by the carriers in this or any other case, that the crossing of the bridge at Cairo consumes as much time as the travel over 112 miles of road; nor has it been contended that the crossing of that bridge in any way affects the ability of the carriers to render prompt and efficient service. We are

at a loss, therefore, to see how that fact can enter into the determination of the question whether the route is unreasonably long and the Commission does not attempt to enlighten us on the subject, although its attention was directed thereto in the briefs and oral argument before the Commission.

We submit there was no basis for the finding of the Commission, if indeed it can be said there was such a finding, that the routes via Cairo are unreasonably long, as compared with the routes via Memphis, and without such a finding, supported by substantial evidence, the Commission has no authority under the law to deprive these carriers of the maximum haul.

IX.

THE INTERSTATE COMMERCE COMMISSION ERRED IN REQUIRING THE APPELLANTS, THE COTTON BELT AND IRON MOUNTAIN RAILWAYS, TO ESTABLISH THROUGH ROUTES AND JOINT RATES TO PADUCAH, KY., AND THUS MEET THE SHORT LINE MILEAGE OF THE ROCK ISLAND RAILWAY AND DEPRIVED THE IRON MOUNTAIN AND COTTON BELT OF REVENUE FOR SERVICE FOR THE ADDITIONAL HAUL OVER THEIR RAILS, IN VIOLATION OF ARTICLE 5 OF THE CONSTITUTION OF THE UNITED STATES, AND THE DISTRICT COURT ERRED IN SUSTAINING ITS ORDER FOR THAT REASON.

The effect of the order entered by the Interstate Commerce Commission in this case, requiring the carriers to establish joint through rates via Memphis to Paducah, is to compel the Cotton Belt and Iron Mountain Railways, appellants herein, to meet the short line mileage of the Rock Island Railway to Paducah. This action contravenes the fundamental principle announced by the Commission itself in hundreds of cases that a carrier whose route is longer than the short line mileage, may refuse to meet the

rate made by the short-line carrier. While carriers may meet the short-line mileage voluntarily, we are not aware of any ruling of the Interstate Commerce Commission besides this, or the courts that hold that they can be compelled to do so, for to so hold would be repugnant to the idea so often expressed by this Court that a carrier is entitled to compensation for all services rendered by it. In order to comply with this order, the Cotton Belt especially would have to render gratuitous service by hauling the lumber in some instances 50 or 60 miles further than the Rock Island would haul it for the same compensation. The illustration given by witnesses Watson, Johanson and Calef (Rec., pp. 154, 168 and 1255) of the practical operation of a compliance by those carriers with this order of the Commission, demonstrates the inequity of such a requirement because it would require these carriers to, in many instances, carry freight at less than cost and really at a loss, which was held to be illegal by this Court in the cases of

Northern Pacific Ry. v. North Dakota, 236 U. S. 597;

East Tenn., Etc., Ry. Co. v. Interstate Commerce Comm., 181 U. S. 20.

X.

**THERE WAS NO DISCRIMINATION AGAINST
PADUCAH IN FAVOR OF CAIRO PROVED
BEFORE THE INTERSTATE COMMERCE
COMMISSION OR THE DISTRICT COURT.**

Our next contention is that there was no evidence before the Commission to sustain a finding that the present combination of rates to Paducah gives an undue or unreasonable preference or advantage to Cairo.

There was no evidence before the Commission to sustain a finding that the present Paducah rate gives an undue or unreasonable preference or advantage to Cairo.

The only evidence offered by complainants which in any way tended to prove the charge of undue discrimination was in substance that the combination of rates to Paducah was higher than the rate to Cairo; that certain dealers in, and rehandlers and manufacturers of, lumber, who resided at Paducah, had found it advantageous to maintain factories and yards at Cairo because of the lower rates to that point; and that certain parties, who it is claimed, investigated conditions at Paducah with a view to locating factories or yards at that point, did not locate there, but subsequently located at Cairo. That this is not suf-

ficient to establish **undue discrimination** or **undue preference** is settled by the authorities.

In the case of

Interstate Commerce Commission v. Southern Railway, 117 Fed. 741,

the question involved was one of discrimination against Danville and in favor of Lynchburg, Va. The Court said:

“The effect of the present rates on the growth and prosperity of Danville is worthy of careful consideration. Many Danville citizens testified that the town has not prospered as it should have done because of the high freight rates charged by the defendant, but these witnesses, consciously or unconsciously are, I think, contrasting Danville with Lynchburg. A low freight is an important factor in the prosperity of cities. But the prosperity enjoyed by Lynchburg as a result of low rates can not properly be used as a basis of comparison. Before it can be said absolutely that Danville has not prospered as it should have done, it must appear that comparisons are made, not with points where competition has produced unusually low rates, but with cities where the circumstances are similar to those existing at Danville. The evidence is that one or more industries were deterred from moving to Danville because of the high rates. But here again we are confronted with the same difficulty. Did not the proposing manufacturers contrast the Danville rates with those prevailing at some place or places where competition has

brought about very low rates? If this is true—and the impression left on my mind is that it is—this evidence can not be treated as of much weight.”

Under the authorities which we have heretofore cited, railroads are only bound to give the same rates to localities under the same conditions and circumstances. Here no attempt was made by the Board of Trade of Paducah to show that the conditions and circumstances were similar. To come within the inhibition of Section 3 of the Act this fact must be shown (**Interstate Commerce Commission v. Baltimore & Ohio R. R. Co.**, 145 U. S. 263, 36 L. Ed. 699; **Interstate Commerce Commission v. Chicago Great Western Ry. Co.**, 141 Fed. 1003; **Interstate Commerce Commission v. Southern Railway**, 117 Fed. 741; **D. L. & W. R. R. Co. v. Kuttle**, 147 Fed. 51; **Louisville & Nashville R. R. Co. v. Interstate Commerce Commission**, 195 Fed. 541).

Complainant before the Commission having wholly failed, in fact having made no attempt to sustain the burden of proof in this respect, it did not make a case of undue discrimination under the statute.

Not only was there an absence of evidence in this case that the conditions and circumstances under which the rates were made to Paducah and Cairo, respectively, were similar, but the evidence on the part of the carriers, as has heretofore been stated, was to

the effect that the Cairo rate was the result of severe water and rail competition and this evidence is supported by previous decisions of the Interstate Commerce Commission.

The Supreme Court of the United States has said, in **Texas & Pacific Ry. Co. v. Interstate Commerce Commission**, 162 U. S. 197, 40 L. Ed. 940, 947, that in considering the question of discrimination:

“The Commission is not only to consider the wishes and interests of the shippers and merchants of large cities, but to consider also the desire and advantage of the carriers in securing special forms of traffic, and the interest of the public that the carriers should secure that traffic, rather than abandon it, or not attempt to secure it. It is self-evident that many cases may and do arise where, although the object of the carriers is to secure the traffic for their own purposes and upon their own lines, yet, nevertheless, the very fact that they seek, by the charges they make, to secure it, operates in the interests of the public.”

The correctness of that statement is clearly indicated in this case. As has heretofore been stated, the rates to the vast consuming territory north of the Ohio River are made by combination of the rate to Cairo plus the rate beyond. Thus, all of the consumers obtain the benefit of the competition at Cairo. Paducah itself obtains the benefit of this competition.

As we have shown, the basis of all rates of the Rock Island through Memphis is the combination of the rate to Memphis plus the rate beyond, but by reason of the competition which the Rock Island must meet at Cairo, the Cairo rate is made much less than it would be under normal conditions. Because of the fact that the Paducah traffic is moved through Cairo, the Paducah rate is made up of the combination of the rate to Cairo plus the rate beyond and Paducah thus obtains the benefit of a rate very much less than the normal rate. Under the Commission's order the Rock Island, for example, will have to either publish the Cairo rate to Paducah or relinquish the Cairo business to the direct lines. Let us assume that it adopts the latter course and see what the result will be. From all points of origin which are served both by the Rock Island and one of the direct lines to Cairo, the direct line will get the business, but from all points which are served only by the Rock Island the shipper will have to pay the combination of the rate to Memphis plus the rate beyond, which, from the territory north of the yellow pine blanket, varies. A shipper located, say ten miles from a point at which the Rock Island and a direct line intersect, will have to pay a much higher rate than a shipper located at the intersecting point, which, of course, will put him at a disadvantage and likely put him out of business.

The Interstate Commerce Commission, in **Wisconsin & Arkansas Lumber Co. v. St. L., I. M. & S. Ry. Co. et al.**, 33 I. C. C. 33, *l. c.* 37, 38, a case involving the grouping of all points of production in the yellow pine blanket, said:

“When, however, materials are found only in delimited areas and consumed throughout widely extended markets—in which case there is no possibility of shifting the sources of supply—there is much to be said for blanketing the rates from such a common source to the gateways where these materials radiate to consuming markets. Such an arrangement tempers to the common benefit of consumers generally the particular advantage conferred by nature upon the localities in which such natural resources are found.

“These blanket rates from the productive region allow dealers wide range in their choice of the material; they pit in competition producers throughout the producing district, and by stimulating rivalry, provide a guaranty against exorbitant prices or undue profits. Therefore, the blanket system of rate making, if ever to be approved, must commend itself for application under these circumstances.”

But, obviously, if the Rock Island or Louisiana & Arkansas Railway relinquish the competitive Cairo traffic, the rates from all points in the blanket which are local to the Rock Island or Louisiana & Arkansas will be higher than from points which are also served

by a direct line and both the Rock Island or Louisiana and Arkansas and the manufacturer located at such local point must suffer.

We submit that there not only was no evidence before the Commission from which it could find that this traffic is transported to Cairo and Paducah, respectively, under similar conditions, but that, on the contrary, the evidence clearly showed that the seeming discrimination was not undue.

XI.

The order of the Interstate Commerce Commission did not name the connections via which the through routes and joint rates should be established, nor could it do so because the complainant failed to name the carriers via which it sought such through routes and joint rates, as it was required by law to do.

The eleventh ground upon which we rely for a reversal of the order of the Commission is that the Commission has not designated the connecting line to the through routes established by it; and that the Commission is without authority to order through routes via all lines operating between Memphis and Paducah. These two contentions may be treated together.

In the case of

**Enterprise Fuel Company v. Pennsylvania R. R.
Co., 16 I. C. C. 219,**

the Commission holds that the first Section of the Act to Regulate Commerce requiring the carriers to establish through routes and just and reasonable rates applicable thereto, the third Section which requires them to afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines, and the 15th Section which authorizes the Commission to establish through routes and joint rates, must be read together, and that so read it can not—

“be fairly said that all railroads must unite in through routes between all points.”

By the same line of reasoning, we argue that through routes can no be established via all rail lines between given points, for to do so would be to make all carriers subject to the Act,

“one united system”,

which the Commission has held it has no authority to do (Sioux City Terminal Elevator Co. v. Chicago, Milwaukee & St. Paul Ry. Co., 27 I. C. C. 457, 463). If we are right in our contention, then it devolves upon the Commission to designate the line which

must participate in the through route beyond the terminus of the lines of these petitioners, and having failed to do so, its order is ineffective and should be set aside.

The Commission has itself so held, for, in the case of

**American National Live Stock Association v. So.
Pac. Co., 32 I. C. C. 439,**

“There is dispute as to the proper interpretation of our order in the former case. Complainants contend that the order required joint rates to be established by the Atchison, Topeka & Santa Fe, hereinafter called the Santa Fe, in connection with the Southern Pacific and Arizona Eastern lines. The assertion that some of the defendants failed to comply with the order is based upon this theory. The carriers contend that their tariffs are in strict compliance with the requirements of the order, and that the acceptance of such tariffs by the Commission was in effect an official approval thereof.

The complaint in the former case did not ask for joint rates between the Santa Fe and the Southern Pacific, or between the Santa Fe, the Arizona Eastern and the Southern Pacific. It is not within our authority to establish through routes and joint rates in a proceeding which does not involve the specific question, and under the pleadings in the former case we could not have lawfully established through routes and joint rates such as are now contended for. We do not find in our report or in the order entered thereon

any warrant for a contention that we undertook to establish joint rates that were not asked for in the complaint.”

And it reiterated this ruling in the case of
**Graham & Gila County Traffic Asso. v. A. E. R.
R. Co., 40 I. C. C. 578,**
wherein it said:

“In the evidence and on brief and argument complainant contended for through routes and joint rates from California to points on the Globe division. **But the complaint contains no request for joint rates between the Southern Pacific and Arizona Eastern and it is not within our authority to establish through routes and joint rates in a proceeding which does not involve the specific question** (American National Live Stock Asso. v. S. P. Co., 32 I. C. C. 438-439).”

This must needs be so, for the reason that a carrier defendant in these proceedings before the Interstate Commerce Commission, like those in the Courts, has the right to know with which of its connections a through route and joint rate is demanded, so that it may shape its evidence to meet that issue. The case at hand furnishes an apt illustration of the wisdom of such a rule, for, as the order of the Commission in this case is based solely on the short-line mileage, which is via the Rock Island and the Illinois Central, the carriers could not be presumed to meet

an issue of a demand for joint through rates via the Rock Island or any of the other carriers up to Memphis, in conjunction with the Nashville, Chattanooga & St. Louis Railway, which it is shown is a circuitous route between Memphis and Paducah, yet, under this order, we are required to establish a joint through rate via that railway. If we are wrong in this contention, nevertheless we contend the Commission's order is void. The only carriers, operating lines between the termini of these petitioners and Paducah, who were party to this proceeding were the Illinois Central R. R. and the Nashville, Chattanooga & St. Louis R. R. The Commission has based its order for through routes and joint rates on the fact that via Memphis and the Illinois Central R. R. the mileage to Paducah is less than via Cairo. The evidence showed, however, that via Memphis and the N., C. & St. L. the mileage to Paducah is greater than the routes via Cairo. Assuming then, as we must in the absence of evidence to the contrary, that all other conditions are equal, it can not be found that the routes via Cairo are unreasonable as long **as compared with** the route via Memphis and the N., C. & St. L., and the Commission is, therefore, prohibited by Section 15 of the Act to Regulate Commerce from ordering the establishment of through routes and joint rates via Memphis and the N., C. & St. L. and thus requiring these petitioners to embrace in the through route substan-

tially less than the entire length of their respective roads lying between the termini of the proposed through route. It is only when the route of the carrier is unreasonably long **as compared with the other route**, that the carrier can be deprived of its maximum haul.

XII.

There Was No Evidence Before the Commission or the District Court That the Cairo Rates Are Reasonable for the Service to Paducah.

The twelfth ground upon which we allege the order of the Commission is void is that the Commission has ordered the establishment of joint rates to Paducah

“not in excess of the rates at present in effect from the same points or groups to Cairo, Ill.”

There was absolutely no evidence submitted by the complainant before the Commission that the Cairo rate would be a proper rate to apply to the transportation of lumber and logs to Paducah. On the contrary, the evidence showed, and in this it was supported by previous decisions of the Interstate Commerce Commission, that the Cairo rate was abnormally low, due to rail and water competition both from the north and from the south; that at Cairo,

the two main trunk lines serving the southwestern lumber producing territory, to wit, the Iron Mountain and the Cotton Belt, encountered the competition of two of the main trunk lines serving the lumber producing territory east of the Mississippi River, to-wit, the Illinois Central and the Mobile & Ohio, all of these trunk lines having their own rails direct to Cairo. It was also shown that from Cairo various lines of railway diverge into the vast consuming territory known as Western Trunk Line, Central Freight Association and Official Classification Territories. It was also shown that none of the trunk lines, from the southwestern producing territory, reach Paducah with their own rails, and only two lines, to wit, the Illinois Central and the Nashville, Chattanooga & St. Louis, reach Paducah from the territory east of the Mississippi River and that on branch lines and that the lumber traffic of the latter is insignificant. The evidence was, also, that because of the competitive conditions at Cairo, the rates to that point are lower than they otherwise would be and in this, the evidence is supported by decisions of the Interstate Commerce Commission.

Respondents contend that there is no longer any movement of lumber to Cairo by water, but this contention is refuted by the record (see Ducker's Exhibits 1, 2 and 3, Rec., pp. 182-183-184), which shows that during the years 1913 and 1914, 6930 carloads

of lumber came into Cairo by water, while the record is silent as to the amount of such movement, if any, to Paducah. The witnesses for the carriers, as well as for the Cairo intervenor, stated that there was no such movement (Rec., pp. 268-269). If there was any such movement, it was incumbent on the complainants in these cases before the Commission to establish that fact by competent evidence and their failure to do so justifies this Court in concluding that there was no such movement. The Commission has virtually so said in the

**Missouri River Commodity Rates Case, 28
I. C. C. 267,**

viz:

“The reasons given by respondents for the proposed advances are that many of the commodities affected do not actually move and there is no necessity for a continuation of commodity rates; hence a reversion to the class basis; that discrepancies in rates between the various lines serving the cities interested were sought to be removed, and that many of the existing rates were too low. That many of the rates are obsolete seems to be admitted and, with the so-called concession made by respondents, Kansas City is the only remaining protestant. It offered no witness and its complaint, as expressed by its transportation commissioner, its sole representative, is more against the quantity and extent of the advances than their effect upon Kansas City business. No

shipper or consumer appeared and no evidence was offered to show the extent of the movement of commodities affected by the increases sought. In fact, it was admitted by this protestant that no compilation showing the monetary effect of these increases upon the Kansas City shipper or consignee had been prepared. While the law casts upon the respondents the burden of showing that the increased rates are reasonable, it is but fair that the parties at whose instance suspensions are ordered should present to the Commission all facts, circumstances, conditions or reasons which, in their opinion, tend to show that the increases should not be allowed."

But, even though there be no water competition, there is still sharp rail competition. In this connection, the language of the Interstate Commerce Commission in the case of

Sioux City Terminal Elevator Co. v. C., M. & St. P. Ry. Co., 27 I. C. C. 457, 463,

is pertinent, to wit:

"Both Omaha and Kansas City are on main lines in the direct route of the principal carriers from this western grain-producing territory to the east. Sioux City is not by any means in the same position with respect to its railroad facilities and never has been. East and west lines of equal importance in their effect on the adjustment of grain rates have never broken there as they have at Omaha and Kansas City. The short lines

originally built west from Sioux City, referred to at the supplemental hearing, are not in any sense comparable with the trunk lines that terminated at Omaha and Kansas City in their logical effect on the relative rate adjustment on grain through that gateway. * * * We are satisfied that there has been and is a substantial dissimilarity in the circumstances and conditions of transportation of grain through Kansas City and Omaha from those through Sioux City."

In

**Investigation and Suspension Docket No. 540,
34 I. C. C. 102, 105,**

the Commission said:

"The differences in transportation conditions result from the fact that, while the lines of two of the carriers which serve the producing territory reach Omaha, no carrier originating lumber in that territory reaches Sioux City over its own rails. In consequence there is an enforced division of the earnings. * * * There is undoubtedly some justification in this fact for a distinction between the movements to Omaha and to Sioux City."

Under the authorities heretofore cited a competitive rate, like the Cairo rate, is not a proper measure of the reasonableness of the rate to another point, like Paducah, and the order of the Commission, therefore, requiring the maintenance of the present Cairo rates to Paducah must be set aside.

XIII.

**THE ORDER OF THE INTERSTATE COMMERCE
COMMISSION ESTABLISHING THROUGH
ROUTES AND JOINT RATES IS CONFISCA-
TORY OF COMPLAINANTS' PROPERTY.**

We also contend that the order of the Commission is confiscatory and for that reason void. As has heretofore been stated, the evidence showed that the Cotton Belt has no line of its own into Memphis, but all traffic tendered to it for movement to or through Memphis is delivered to the Iron Mountain at Fair Oaks and under contract between the two carriers the Cotton Belt pays to the Iron Mountain for transporting the traffic from Fair Oaks to Memphis 3 cents per 100 pounds and pays to the Kansas City & Memphis Ry. & Bridge Co. a bridge toll of 1 cent per 100 pounds. It must also pay to the connecting carrier between Memphis and Padueah a reasonable division for its service, which division ranges from 6 to 7 cents per 100 pounds. In addition, where the traffic originates on a line other than the Cotton Belt, the latter must pay the originating carrier a reasonable division. For example, the rate from Winfield, La., to Cairo is 16 cents; the Cotton Belt pays the originating carrier a division

of 7 cents for its service, to the Iron Mountain 3 cents for its service, a bridge toll of 1 cent and to the line between Memphis and Paducah a division of 7 cents, a total of 18 cents. The traffic is received from the originating carrier by the Cotton Belt at Stamps, Ark., and is transported by the Cotton Belt to Fair Oaks, Ark., a distance of 421 miles, for which the Cotton Belt receives absolutely no compensation, but on the contrary must pay 2 cents per 100 pounds for the privilege of transporting it (Rec., pp. 154-155).

Again, taking a point north of the yellow pine blanket, to wit, Clarendon, Ark., the rate to Cairo is 11 cents. If the Cotton Belt is required to route this traffic to Paducah through Memphis at the Cairo rate, it must pay the Iron Mountain 3 cents for its service from Fair Oaks to Memphis, pay the Kansas City & Memphis Ry. & Bridge Co. a bridge toll of 1 cent and pay the Illinois Central a division of 7 cents, a total of 11 cents. In this instance the Cotton Belt would perform a transportation haul of 52 miles for no compensation (Rec., p. 155). This is true also of the other petitioners herein, as well as the intervening petitioner (Rec., p. 168).

It is well settled that a carrier is entitled to receive for its service not only the cost thereof, but some compensation in addition thereto, and that an order which requires it to perform a service for

cost or less than cost is void (Southern Ry. Co. v. St. Louis Hay & Grain Co., 214 U. S. 297, 53 L. Ed. 1004; Northern Pacific Ry. Co. v. State of North Dakota, 236 U. S. 585, 59 L. Ed. 575; Norfolk & Western Ry. Co. v. Conley, 236 U. S. 605, 59 L. Ed. 745).

The Commission, in its opinion, attempts to answer this argument by the statement that:

“The question of divisions, however, is not involved in this proceeding.”

That, obviously, is true, but as has frequently been said by the Commission, the question of divisions is one of bargain between the carriers. The testimony in this case is that these petitioners have secured the best divisions obtainable; it can not, therefore, be assumed that they are paying unreasonable divisions to their connections. Each of the carriers is entitled to a reasonable division of a reasonable rate for the transportation of this traffic to Paducah and the Commission can not justify its failure to establish a reasonable rate by the mere statement that it will divide the rate prescribed in such a manner that each of the carriers will receive its *pro rata* proportion thereof.

It having been shown that under the Commission's order the petitioners will be required to transport the traffic at less than cost, the order of the

Commission must be set aside as confiscatory, for this Court held, in the case of

Northern Pacific R. R. v. North Dakota,
236 U. S. 585,

that, for a State to require a carrier to haul any particular commodity at mere cost or at a loss was tantamount to confiscation.

IN CONCLUSION.

That the order of the Commission is so unreasonable and arbitrary as to be beyond its power, is apparent, we think, from an analysis of its opinion.

As has heretofore been stated, the Commission orders these appellants and the intervening appellant to maintain through routes and joint rates to Paducah not higher than the present rate to Cairo, and gives them the option to operate the through routes and joint rates via Cairo if they desire to do so. The testimony is that the rate of the Illinois Central beyond Cairo is 6 cents. That rate has not been found to be unreasonably high and the testimony in this case is that that would not be an unreasonable division for the Illinois Central to demand. But even though the Illinois Central accept a division of the through rate, which is less than its local rate—let us assume that they will accept a division of 3 cents—that 3 cents

will have to be paid by these appellants out of the total rate, which at present from the yellow pine blanket is 16 cents. As has heretofore been stated in the Chicago Lumber and Coal Co. case, the Interstate Commerce Commission specifically held that the 16-cent rate from the yellow pine blanket was not an unreasonable rate and in subsequent cases stated that the rate was lower than it would otherwise be because of the severe competition existing at Cairo. So that the effect of the order of the Commission in this case is to require the appellants to perform a service from the point of production to Cairo on traffic which is destined to Paducah at a lesser charge than the Commission has found it entirely proper for the carriers to charge on traffic destined to Cairo.

The Commission does not attempt to find that the Paducah rate is unreasonable *per se*, or establish a reasonable rate for the transportation of this traffic to Paducah, but only fixes the relation of the rates to Paducah and Cairo, respectively, basing its finding on the fact that if routed via Memphis the distance the traffic is hauled to Paducah and Cairo, respectively, is approximately the same.

It does not make a finding of the vital issue whether the circumstances and conditions under which the traffic is transported to Cairo and Paducah, respectively, are similar or dissimilar. On the contrary, it finds the Rock Island is compelled to meet competi-

tion at that point and holds that if it continues to do so it must maintain the same rates to Paducah, thus creating competition at the latter point. Then it orders the other carriers to meet the unnatural competition which it has thus created at Paducah.

It does not find that the routes through Cairo are unreasonably long or that the public interests require the establishment of through routes via Memphis, on the contrary, although the petition prays the establishment of through routes via Memphis, the Commission authorizes the appellants to continue to transport the traffic via Cairo if they see fit to do so. If the Commission had found that the routes through Cairo were unreasonably long and that the public interest required the establishment of routes through Memphis it was the duty of the Commission to so order, and it is reasonable to assume that it would have done so. To contend that the Commission did find the Cairo routes to be unreasonably long and at the same time found that the public interest required the establishment of routes through Memphis, is to assume that the Commission has neglected its duty.

While the Commission bases its order largely on the fact that the short-line distance to Paducah is via Memphis and the Illinois Central, and that that route is, therefore, the natural route, its order nevertheless, requires the maintenance of through routes via Memphis and the N., C. & St. L., which the undis-

puted evidence shows is even longer than the Cairo routes. Its order is, therefore, so inconsistent with its findings that it must be designated unreasonable and arbitrary, and for that reason set aside.

We, therefore, pray a reversal of the decree of the District Court.

Respectfully submitted,

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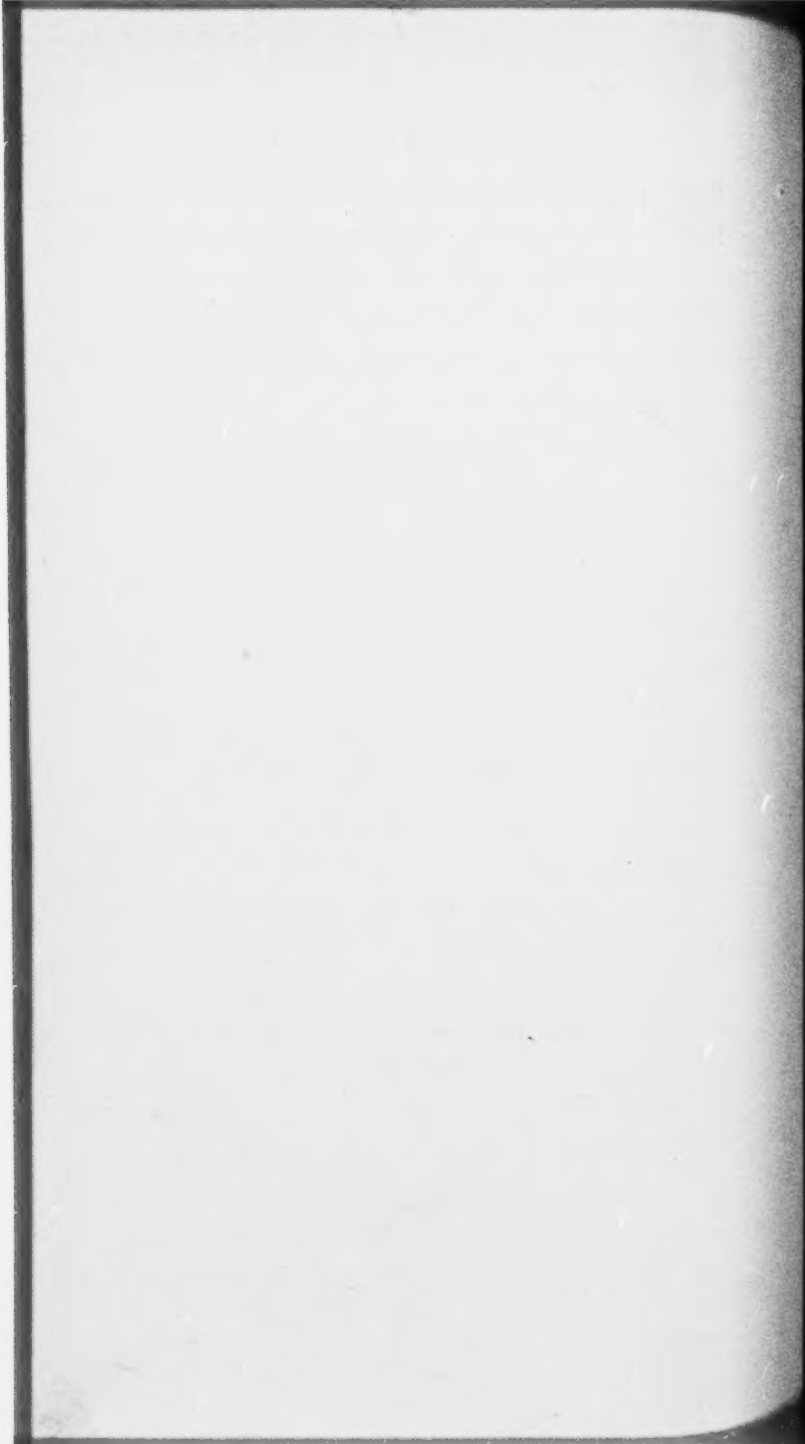
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St. Louis, Mo.,

September 7, 1917.



MAILED
OCT 18 1917
JAMES C. HARRIS

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RAILWAY COMPANY, ST. LOUIS
MO. DIVISION & WESTERN
DIVISION

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THE ST. LOUIS SOUTH-WESTERN
RAILWAY COMPANY, ST. LOUIS
MO. DIVISION & WESTERN
DIVISION

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ST. LOUIS SOUTH-WESTERN RAILWAY COMPANY, ST. LOUIS MO. DIVISION & WESTERN DIVISION

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IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

THE ST. LOUIS SOUTHWESTERN
RAILWAY COMPANY, ST. LOUIS,
IRON MOUNTAIN & SOUTHERN
RAILWAY et al.,

Appellants,

No. 199.

vs.

THE UNITED STATES and INTER-
STATE COMMERCE COMMISSION.

Appeal from the District Court of the United States
for the Western District of Kentucky.

REPLY BRIEF OF APPELLANTS.

I.

Counsel for the Government, in answer to our contention that the Interstate Commerce Commission is without power to require us to establish through routes and joint rates from the Southwestern lumber producing territory involved in this case to Padu-

cah, Ky., say that even though we comply with this order of the Commission, we are still at liberty to refuse shipments of lumber or logs from said producing territory to Paducah.

In this contention they are clearly in error, for the reason that the order requires us to establish through routes and joint rates with our connections to Paducah, which means that we must publish rates which apply from the point of origin to Paducah in our tariffs. When we do that, we certainly are not at liberty to refuse a shipment tendered to us at such point of origin for Paducah. In other words, their contention is that our status so far as refusing shipments of lumber or logs to Paducah is the same as it was before the order of the Commission was made. They cite the **Atlantic Coast Line Case, 219 U. S. 186**, in support of their contention.

That is the case on which we are relying for this Court to say that the Commission has no such power as it was mooted in that case. That case, as we stated in our original brief, was based entirely upon the **voluntary** act of the carrier in undertaking to transport freight from point of origin to destination. This Court said in that case that, by virtue of the Carmack Amendment, the acceptance by an initial carrier of goods for transportation beyond its rails obligated it to carry the property to that destination, and that any connecting carriers that it might employ

to continue the carriage of the goods beyond its own rails were its, and not the shipper's agents. In other words, it practically said to the initial carrier that when it receives goods for transportation beyond its rails, the haul is in legal contemplation to be considered as a single line haul. We have not made any such contract with our connections because we have consistently refused to enter into any joint through rates with them for the carriage of freight to Paducah, and we insist upon our right to still do so, for the reason, as we have said that the carrier's appellants were not incorporated for the purpose of carrying freight beyond their own rails which do not reach Paducah, and hence, they can not be compelled to establish joint through rates to that point, especially on the basis of a rate to the terminus of their lines, viz, Cairo, which, as we have shown, is a highly competitive point, both by water and rail, whereas Paducah is neither.

It is argued on page 11 of the Government's brief that:

“It is not necessary to inquire whether Congress could require a carrier against its will, chartered and lying wholly within a given state, to receive freight destined for points beyond its own line or to become a part of a through route for interstate transportation, for the double reason that neither Congress **nor the Commission** has attempted anything of the kind.”

We say, in answer to this contention, that the Commission has not only made such attempt, but put it in the shape of a positive requirement that we enter into joint through rates with our connections at either Memphis or Cairo. As soon as we do that, we practically contract to carry any freight offered to us to Paducah, and can not lawfully refuse to receive such freight destined to that point, with a provision establishing joint through rates with our connections from the producing points to Paducah in our tariff.

Counsel concede that this Court has not yet expressly passed upon what it has aptly designated in the **Atlantic Coast Line Case** as the very large question whether a carrier has a "right to refuse to make a through route or joint rate when such route and rate would involve the continuance of a transportation over independent lines."

It is said that because we engage in interstate commerce that we can be compelled to establish these joint through rates with our connections to Paducah. We deny this, for the reason that the law does not so read. We admit it is within the competency of Congress to declare, as it did in the Safety Appliance Act, that all carriers who engage in interstate commerce may be compelled, through the Interstate Commerce Commission, to make joint through rates with their connections, but until it has so

said, we question the right of the Commission to make any such order as it did in this case.

II.

In answer to the contention of opposing counsel that "the determination of the Commission to establish a through route to Paducah involved no question of law which can be reviewed by the Courts," we have to say that under the rulings of this Court in the cases of the **Interstate Commerce Commission v. L. & N. R. R.**, 227 U. S. 91, and **Florida East Coast Ry. Co. v. U. S.**, 234 U. S. 167, findings of the Commission that are "contrary to the indisputable character of the evidence, or if the facts found do not, as a matter of law, support the order made," or if the finding is without evidence to support it, are subject to review by this Court.

It is to be noted that the quotation made by counsel on page 13 of their brief, from Section 1 of the Act to Regulate Commerce, making it the duty of carriers "to establish through routes and reasonable rates applicable thereto" (34 U. S. Statutes, 584) does not say that they shall make **joint** through rates with their connections.

The Interstate Commerce Commission and this Court have, on innumerable occasions, held that a through route may be such when composed of a

combination of locals, such as were in effect at the time the complaint before the Commission in this case was filed.

We concede that the Interstate Commerce Commission is authorized by Section 15 of the Act to Regulate Commerce to compulsorily establish joint through rates over the lines of more than one carrier, but we contend that authority given the Commission by Congress was beyond the powers of Congress, for the reason that it trenched upon the constitutional guarantees contained in Article V of the Constitution of the United States, which forbids taking one's property without due process of law, and without just compensation, which we claim the establishment of the order in this case does, for the reason that it compels us, in order to participate in the traffic to Paducah, to meet the short line mileage of the Rock Island Railway in doing so, and requires us, to the extent that we are required to haul that property a greater distance than such short line mileage, to do so without compensation.

The U. S. District Court, in its opinion in this case, said:

“The effect of the order compels the Cotton Belt and Iron Mountain to compete with the other roads for the Paducah traffic on terms fair to Paducah. There seems to be no reason why they should not be compelled to do so.”

As a legal proposition, we do not believe that this statement will stand the test of judicial scrutiny, for the reason that it compels two long lines to meet a short line rate, which necessarily involves a greater service than that given by the short line, and therefore produces a discrimination between the carriers. The reports of the Interstate Commerce Commission and of the Courts abound with decisions to the contrary. The Interstate Commerce Commission fixed the limit of its authority in this respect in the case of

**Hydraulic Pressed Brick Co. v. Railways,
13 I. C. C. 347,**

wherein it is said:

“Neither can it (the Commission) in dealing with the rate applied on the shipments in question prescribe a joint through rate via the route over which these shipments moved upon the basis of what might be regarded as a reasonable rate via the shorter line. These shipments were carried a distance of 1,208 miles, and while it is probable that if the lines constituting the longer route are to continue to participate in the business between these points they must accept rates that are not higher than the rates which when applied via the shorter route are reasonable and just, we would not be justified in so ordering or in awarding reparation on past shipments upon that basis. A carrier may in its own interest, if it so desires, carry for a longer distance over its own line than would be necessary if carried be-

tween the same points over the line of its competitor, in order to obtain a portion of the competitive business upon terms that will afford some profit. **It does not necessarily follow, however, that a carrier in competing for traffic in this way thereby subjects itself to an order compelling it to do so."**

In the

**Commercial Coal Co. v. Railway case, 15 I.
C. C. 14,**

it is also said:

"A carrier with a longer route is not obliged as a matter of law to meet the rate of a short-line competitor. Neither is a carrier via a longer route obliged as a matter of law to reduce its rate because its competitor has reduced a rate which has been the same via both routes."

In the

Loup Creek Colliery Co. case, 12 I. C. C. 477,
it is also said:

"It is claimed that the result here sought is necessary to put the operators on each of these roads in this district on a parity, the withholding of which under existing conditions would be unjust discrimination. However desirable it might be in some respects for the coal operators in an entire district to have the same rates from all points, particularly where they are not separated by great distances, **we do not understand that the**

prohibitions of the statute against unjust discriminations in connection with the provisions for establishment of through routes and joint rates were intended to force separate and independent carriers in such a district to make the same rates from points on their respective lines, ignoring inequalities in other respects. Such a ruling would in many cases, as in this, totally disregard the long established practice, recognized as reasonable and just by legislatures, railway commissions, and courts, as well as carriers, of allowing two or more roads making up a through line to charge somewhat more for the through transportation, the earnings on which must be divided among all, than would be deemed reasonable and sufficient for the transportation if performed wholly by a single road."

In case of

Swanson v. Railway, 42 I. C. C. 285,

the Commission said:

"The law does not require a carrier with a longer line to meet the rate of a short-line competitor, nor is the unreasonableness of a rate established by evidence merely showing that a lower rate is in effect over another route."

It is a settled principle of rate-making that the Interstate Commerce Commission, where several lines serve the same points of origin and destination, in prescribing maximum rates, must take into consideration the mileages of all the lines serving the des-

tinal points, and not make its finding on the short-line mileage alone, as the Commission did in this case, for the witnesses of the Paducah Board of Trade who submitted exhibits showing the mileages from various points of origin to Paducah, admitted that they were made on the shortest possible mileage obtainable (Rec., pp. 236-237).

This is the first case to our knowledge in which the Interstate Commerce Commission has departed from this well-established principle of considering the mileages of all the lines serving the destinal point, instead of the short-line mileage. For instance, in the case of

**Northern Pine Manufacturers' Assn., 33 I.
C. C. 369,**

it is said:

“In testing the reasonableness of the rates which are here attacked the defendants ask consideration for all the carriers whose lines participate in the trade of the producing points. They show that the territory in question is served by a number of carriers whose hauls are longer than the short-line distances. This appears clearly from the exhibits offered in evidence by complainants. From some of the most important producing points the movement southward does not pass through the twin cities, upon which the rates are based. **The defendants are justified in asking some consideration of these facts.**

We are of the opinion, and find, that the rates here attacked have not been shown to be unreasonable or unduly discriminatory. An order will be entered dismissing the complaint."

In the

**Receivers & Shippers' Asso. Case, 18 I. C.
C. 464,**

the Commission said:

"In **In the Matter of Proposed Advances in Freight Rates**, 9 I. C. C. Rep. 382, the Commission, having under consideration the rates on grain from Chicago to the Atlantic seaboard, announced that **the interests of all competing lines must be considered in determining the reasonableness of those rates, and not merely that line which could handle the business the cheapest.** In the Spokane Case, 15 I. C. C. Rep. 376, the same subject was considered and the same conclusion reached. The last affirmance of this doctrine is found in *Kindel v. N. Y., N. H. & H. R. R. Co.*, 15 I. C. C. Rep. 555, in which the rule is stated by Clark, Commissioner, as follows:

'In the Spokane Case, 15 I. C. C. Rep. 376, we held that the reasonableness of a rate between two points, served by two or more carriers, could not be determined by consideration alone of that line which is shortest and most favorably situated as to operation, earnings, etc., but that the entire situation must be considered.

As before suggested, we can not, in determining competitive rates, select that railroad which is the shortest or most advantageously situated, and limit the rate to what would allow that property fair earnings. We must consider the entire situation and determine a reasonable rate not merely with reference to the Union Pacific, but with reference to all lines serving these Colorado points by reasonably direct lines.'

We have no doubt as to the correctness of this principle and believe it must be applied here within proper limits."

While the Commission might, if this Court should hold that it has the power to establish these joint through rates and thus project the carrier's rails beyond the state of its incorporation, establish a joint through rate, it can not compel the long lines to meet the short-line rate, for by so doing, it would contravene Article V of the Constitution of the United States, forbidding the taking of one's property without due process of law, and depriving a person of his property without just compensation, inasmuch as it would involve a greater service by these long-line carriers than is rendered by the short-line carriers, and contravenes the fundamental principle announced by the Commission, itself, in hundreds of cases, that a carrier whose route is

longer than the short-line mileage may refuse to meet the rate made by the short-line carrier, and forego the business.

While carriers may meet the short-line mileage **voluntarily**, we are not aware of any ruling of the Interstate Commerce beside the one in this case, or the Courts, that hold that they can be compelled to do so, for to so hold would be repugnant of the idea so often expressed by this Court that a carrier is entitled to compensation for all the services rendered by it.

Southern Ry. Co. v. St. L. Hay & Grain Exchange,
214 U. S. 301;

I. C. C. v. Stickney, 215 U. S. 98;

Arlington Heights Case, 20 I. C. C. 111, s. c.
231 U. S. 736;

Detroit Traffic Ass'n v. Ry., 21 I. C. C. 262;

Northern Pacific Ry. v. North Dakota, 236 U. S.
597;

San Diego Land Co. v. Jasper, 189 U. S. 439.

In order to comply with this order, the Cotton Belt and Iron Mountain Railways would have to render gratuitous service by hauling lumber fifty or sixty miles farther than the Rock Island would haul it for the same compensation. This would be opposed to the principle announced by this Court in the following cases:

North Pacific Ry. Co. v. N. Dakota Case, 236
U. S. 597;
East Tennessee, Etc., Ry. Case, 181 U. S. 20;
Norfolk & Western Ry. Co. v. Conley, 236 U.
S. 605.

For further cases in which the Interstate Commerce Commission has held that it must consider the interests of all lines in making these joint through rates, and not only the short lines, see

C. F. A. Coal Rates, 46 I. C. C. 155;
Newport Mining Co., 35 I. C. C. 645;
Superior Commercial Club, 24 I. C. C. 96;
Receivers & Shippers' Assn., 18 I. C. C. 464.

III.

In answer to the argument of the Government under this point, that no carrier is deprived of its rightful long haul, viz, because the order is in the alternative and permits the carriers to haul the traffic via Cairo or Memphis at their option, that, therefore, they are not deprived of their long haul or of revenues to which they are entitled for services rendered under the guarantee contained in Article V of the Constitution of the United States, we have to say that that argument simply begs the question, for the reason that we are required to haul traffic to Paducah on the short-line mileage at a rate which ignores the charge of the Illinois Central for the haul

from Cairo to Paducah. The United States District Court in its opinion in this case, said, in referring to the ruling of the Interstate Commerce Commission: "When they expressed the opinion, as they did, that the Cairo rate was unduly low, all the presumptions are in favor of their finding (authorities cited). It may, for present purposes, be assumed that the 16-cent rate to Cairo was reasonable for the service performed. The rate to Paducah via Cairo is 22 cents, and is made by adding to the Cairo rate the local rate, 6 cents, charged by the Illinois Central for its haul of 42 miles. There was evidence tending to show that this was reasonable for the service rendered, and nothing appears to the contrary. It may be conceded, for it is the law (authorities cited) that the Commission can not condemn a rate without a finding to that effect on substantial evidence." If, then, the two factors of the rate to Paducah are reasonable, the carriers can not be compelled, by an order of the Commission, to charge a lower rate between points of origin and Paducah, for, if they could, there would be no force in the statement that the Court above made, that no rate can be condemned by the Commission without the finding that it is unreasonable *per se*, which, as we have said, the order in this case does not hold for the reason that it does not say that the 16-cent rate to Cairo is a reasonable rate to Paducah, but simply

holds that the carriers must carry the same rate to both Paducah and Cairo. Under this ruling, we could raise the Cairo rate to the Paducah basis, viz, 22 cents, and literally comply with the order, or we could increase the Paducah rate to 26 cents and increase the Cairo rate to 26 cents and thus comply with the order. That being true, as was stated by this Court in the

**East Tennessee, Etc., Ry. Co. v. I. C. C., 181
U. S. 26,**

viz:

“The decree which was entered, however, did not declare the rates charged to Chattanooga to be unreasonable, but simply affirmed the order of the Commission, directing that no greater sum be charged for the carriage of freight to Chattanooga, the shorter, than was exacted to Nashville, the longer distance. As we have already shown, such a decree is not responsive to the conclusion that the rates to Chattanooga were in and of themselves unreasonable, since the right to continue to exact them was sanctioned, provided the traffic to Nashville was either abandoned or the rate to Chattanooga made the same as to Nashville.”

The fact, therefore, that the carriers may still haul this traffic through Cairo at a rate no greater than it gets for the one-line haul to Cairo, does not answer our contention that we can not be compelled to

haul that traffic through Cairo without pay for the greater service rendered via that route.

IV.

In answer to the argument of opposing counsel under Point Four of their brief (page 17) we have to say that we are not contending that Paducah is not entitled to through routes and joint rates, if this Court should hold that the Commission has power to establish such routes and rates via lines which do not reach Paducah by their own rails, but we do say that the Commission can not compel us in any event to carry traffic to Paducah at the same rate that we carry it on a one-line haul to the terminus of our line, viz, Cairo or Thebes, at the rate that we get for that haul, when the record is full of evidence to the effect that the Cairo rate is an abnormally low one and was so made because of the intense competition, both rail and water, which exists at that point, but does not exist at Paducah and has so uniformly been held by the Commission itself in all the cases referred to by us on pages 64, 65 and 66 of our original brief.

V.

Under this point, on page 19 of the Government's brief, it is said: "The establishment of through routes and joint rates can add nothing to the conse-

quence of the Carmack Amendment. Whatever enforced partnership there may be results from the Carmack Amendment itself." That is just what we are complaining of—this enforced partnership which the Carmack Amendment produces as soon as the Commission establishes through routes and joint rates, which it does not now do, for the carrier is still at liberty, as we understand the law, and expect this Court to declare it, to refuse to receive freight to points beyond its own rails, because it was not chartered by the state to do more than that. As we have said in our original brief, inasmuch as there is no question of better service involved in the establishment of through routes and joint rates than now exists on combination, there is no reason why the Commission, at the instance of complainant, can not reduce the rate factors up to and from the Mississippi Gateways and thus accomplish the same result as by attempting to enforce joint through rates between the carriers and rendering them liable to the greater responsibility of being considered single lines from point of origin to destination.

VI.

In answer to the contention of counsel for the Government that it was not necessary for the order to name the connections via which through routes could be established, we have to say that that is

purely a matter of pleading, as stated in our original brief. We had the right to know over which one of the two lines, the Illinois Central or the Nashville, Chattanooga & St. Louis Railways, the complainant was seeking a joint through rate, so as to shape our testimony to meet that issue.

VII.

While the fact that the Commission took into consideration the constructive mileage to be allowed on account of the bridge at Cairo in reaching the conclusion that the Cairo route was unreasonably long, is in a way immaterial as stated by counsel, but not for the reason they allege, yet, inasmuch as the Commission did take into consideration that mileage and it was a very considerable one, viz, 112 miles (29 I. C. C. 591) and the District Court based its opinion on the Commission's right to take that arbitrary mileage into consideration (Rec., p. 304) we have a right to infer that, if the Commission had not taken it into consideration, it would not have found that the route via Cairo or Thebes was circuitous, especially in view of the Commission's insistence in its ruling in the companion case of **Paducah Board of Trade v. Illinois Central R. R. Co., et al.**, decided since its decision in this case, viz, **43 I. C. C. 540**, in which, notwithstanding we made the point we are now making here, viz, that it had no right to consider such

constructive mileage, both because there was no evidence of such mileage in the record (Paducah Bd. of Trade, 37 I. C. C. 722) and because it would be a false basis of computation, it still insisted that it had the right to consider that mileage. This is particularly true for the reason that the Commission itself has said that the fact that two bridges are to be crossed at Cairo, does not constitute an element to be taken into consideration by the Commission in determining the reasonableness of the Cairo rate because it applies to points south of Cairo as well as to Cairo, it being a blanket rate, viz:

**Memphis Freight Bureau Case, 27 I. C. C.
516.**

“Complainant’s attack upon the reasonableness of the rates to Memphis remains to be considered. The showing upon this point begins with a comparison with the rate of 14 cents from the same points of origin to Cairo. Complainant also directs attention to the fact that to enter Cairo a bridge service is necessary, the charge for which by the Illinois Central Railroad, when occasion arises for separate statement, is 2 cents per 100 pounds. So far as the line haul is concerned, therefore, complainant argues that the rate to Cairo, less the bridge charge, is actually 1 cent below the charge to Memphis. **The fact that the rate of 14 cents per 100 pounds applicable to Cairo applies also on shipments to points**

south of this bridge, which, therefore, do not require bridge service, makes it impossible to follow complainant's argument on this point."

The 14-cent rate referred to was the former Cairo rate, now 16 cents.

As it is quite apparent from the ruling of the Commission in this last Paducah case, that it considered this constructive mileage in reaching its conclusion, that the route via Cairo and Thebes was circuitous, in this case, its order should be set aside for that reason.

Interstate Commerce Commission v. L. & N.
R. R., 227 U. S. 93.

VIII.

The contention that "Paducah being equally as favorably situated with respect to traffic in question as Cairo, and 16 cents having been found to be a reasonable rate to Cairo, a higher rate to Paducah would be both unreasonable and discriminatory" can not be sustained because it is based on a false premise, viz, that Paducah has been shown by the record to be as favorably situated, with respect to traffic as Cairo. The record conclusively proves that Cairo is a basing point, while Paducah is not; that Cairo has five trunk lines serving it, while Paducah has only two branch lines serving it, one of which

does not reach the Southwestern lumber producing territory; that Cairo has intense water competition, whereas Paducah has none (see quotations from record, page 62 of our original brief). It therefore follows that a rate reasonable for Cairo would not necessarily be the measure of a reasonable rate to Paducah. On the contrary, according to numerous rulings of this Court, these differences in traffic and transportation conditions establish dissimilar circumstances, which should deprive Paducah of the same rate that Cairo has, which is the terminus of three of the heaviest lumber producing lines from the Southwestern lumber territory. To give Paducah that advantage would deprive Cairo of the advantage of its location at the end of the rails of these heavy lumber carrying lines, which Paducah is not and can not, by reason of its location, be. The order of the Commission was made on the mileage principle alone, which, as we have said, can not prevail in the face of the intensive competition at Cairo, which does not exist at Paducah, and it is the duty, as we conceive it to be, of this Court to see that the Commission gives effect to that evidence which was in nowise refuted by any evidence offered by the complainant. It is simply a question of the right of the Commission to arbitrarily ignore these competitive conditions and apply a mileage yard-stick to Paducah.

IX.

The contention that there is nothing in our point that none of the rails of the appellants reach Paducah and that the ruling of the Illinois District Court in the case of

**St. Louis, Iron Mountain & Southern v. U.
S., 217 Fed. 80,**

referred to in our former brief, as the Metropolis case, which is a companion case to this, is opposed to the ruling in the so-called Social Circle Case, viz:

**Cincinnati, New Orleans & Texas Pacific
Railway Co. v. Interstate Commerce
Commission, 162 U. S. 184,**

is not sustained by the Social Circle Case, which, on the contrary, is a strong authority in favor of our contention in this case, viz, that the Commission had no authority to compel us to make these joint through rates to Paducah, for the question of its power to compel the establishment of such joint through rates, was mooted in that case, as it was in the **Atlantic Coast Case**, hereinbefore referred to and quoted from. In the Social Circle Case, *supra* this Court said:

“It may be true that the ‘Georgia Railroad Company,’ as a corporation of the State of Georgia, and whose entire road is within that state, may not be legally compelled to submit

itself to the provisions of the act of Congress, even when carrying, between points in Georgia, freight that has been brought from another state. It may be that if, in the present case, the goods of the James & Mayer Buggy Company had reached Atlanta, and there and then, for the first time, and independently of any existing arrangement with the railroad companies that had transported them thither, the Georgia Railroad Company was asked to transport them, whether to Augusta or to Social Circle, that company could undertake such transportation free from the control of any supervision except that of the State of Georgia. But when the Georgia Railroad Company enters into the carriage of foreign freight, **by agreeing to receive the goods by virtue of foreign through bills of lading, and to participate in through rates and charges,** it thereby becomes part of a continuous line, not made by a consolidation with the foreign companies, **but made by an arrangement for the continuous carriage or shipment from one state to another** and thus becomes amenable to the Federal act, in respect to such interstate commerce. We do not perceive that the Georgia Railroad Company escaped from the supervision of the Commission, by requesting the foreign companies not to name or fix any rates for that part of the transportation which took place in the State of Georgia when the goods were shipped to local points on its road. It still left its arrangement to stand with respect to its terminus at Augusta and to other designated points. Having elected

to enter into the carriage of interstate freights and thus subjected itself to the control of the Commission, it would not be competent for the company to limit that control, in respect to foreign traffic, to certain points on its road and exclude other points.

The Circuit Court sought to fortify its position in this regard by citing the opinion of Mr. Justice Brewer in the case of *Chicago & Northwestern Railroad v. Osborne*, 10 U. S. App. 430, when that case was before the United States Circuit Court of Appeals for the Eighth Circuit. It is quite true that the opinion was expressed that railroad companies, incorporated by and doing business wholly within one state, can not be compelled to agree to a common control, management or arrangement with connecting companies, and thus be deprived of its rights and powers as to rates on its own road. It was also said that it did not follow that, even if such a state corporation did agree to form a continuous line for carrying foreign freight at a through rate, it was thereby prevented from charging its ordinary local rates for domestic traffic originating within the state.

Thus understood, there is nothing in that case which we need disagree with in disapproving the Circuit Court's view in the present case. All we wish to be understood to hold is, that when goods shipped under a through bill of lading from a point in one state to a point in another are received in transit by a state common carrier, under a conventional division of the charges,

such carrier must be deemed to have subjected its road to an arrangement for a continuous carriage or shipment within the meaning of the act to regulate commerce. When we speak of a through bill of lading we are referring to the usual method in use by connecting companies, and must not be understood to imply that a common control, management or arrangement might not be otherwise manifested."

X.

It is contended under this point (page 29 of the Government's brief) that the Commission held the Paducah rate to be unreasonable *per se*. As we have just said, that can not be true for the reason that we are at liberty to increase our Cairo rate to the Paducah basis, and by doing so, will comply fully with the order of the Commission, or, as we have said, we could raise both rates and still be within the order of the Commission. The fact is that the Commission in that case did not decide that the Paducah rate of 22 cents was an unreasonable rate for the service rendered, but simply held that it was unreasonable because of its relationship to the Cairo rate and, as we have said, we have a right to a ruling on the reasonableness *per se* of the Paducah rate before the Commission can establish a joint through rate, as it attempted to do in this case.

XI.

Counsel for the Government in its argument against the point made by us that the Commission ignored the water and rail competition at Cairo, shown to exist by the record at that point and not at Paducah, says:

“It may be assumed, therefore, that water transportation is available for some part of the traffic going to both. No effort was made to show that the competition between water and rail lines was any keener at one than the other. All that the railroads attempted to do was to show the proportion of the log and lumber traffic of Cairo that moved by water during certain periods. But, as counsel themselves say (brief, p. 56), they left the record entirely silent as to the extent of river transportation to Paducah.”

Aside from the erroneous assumption implied in this argument, that the burden of proof rested on the carriers to show that there was no water competition at Paducah, the record conclusively shows that that fact was proved by the testimony of Witness Bryan (Rec., p. 268), quoted on page 62 of our original brief, as follows:

“Cairo receives vast quantities of lumber by water and Paducah receives none.”

And on page 269 of the record, he states:

“I have given you one other good reason that Cairo hauls three or four thousand carloads of that very kind of lumber into Cairo by water in a year and a half or two years, and Paducah does not get a single car. I consider that a very potent reason.”

This witness also referred to the ruling of the Interstate Commerce Commission in the Sondheimer Case, in which it was stated:

“About 50 per cent of the lumber received at Cairo comes by barge from points on the Mississippi River south of Memphis.”

But, however that may be, the mere fact that there is opportunity for water competition does not prove that such competition exists, for the Commission has itself so held in the

**Escanaba Furiness Men's Association Case,
24 I. C. C. 21,**

wherein it denied Escanaba the Menominee rates, although Escanaba was a water port, but the boats did not land there, and hence it was treated by the Commission as an inland town, saying:

“The car ferry lines make the rates, and Escanaba lacks the compulsion of that facility. It possesses certain natural advantages inherent

to its location, but they do not impel the furnishing of transportation facilities which Escanaba seeks and which inure to the benefit of its commercial rivals.

* * * * *

If we took specific instances of Escanaba's disadvantage as compared with Menominee, we could only repeat the dissimilar circumstances and conditions at Escanaba and Menominee. Escanaba labors under disadvantages, not by reason of its location, not due to lack of natural advantages, but because it is not served by a car ferry or by boat lines against which an order of the Commission would properly lie.

* * * * *

Escanaba is not intermediate between points which are served by car ferry and, as stated by complainants and defendants, is **practically in the situation of being located inland**. Were we to grant it the adjustment here sought, inland points would be justified in making the same demand."

And in the

**Commercial Club of Santa Barbara, Cal.,
Case, 12 I. C. C. 495-498,**

wherein Santa Barbara was seeking the same rates as other Coast cities, viz, Marysville, San Francisco, Los Angeles, Sacramento, Stockton, Benicia, South Vallejo, Port Costa, Crockett, Diamona, Antioch, Oakland, Richmond, San Jose, National City and San

Diego, the Commission denied it like rates, for the reason that, notwithstanding it is a coast city and has a harbor, yet, as the vessels for some reasons not shown by the record did not make that port, treated it as an inland town, saying:

“To hold that the Southern Pacific Company must, as a matter of law, grant to Santa Barbara a terminal rate because she lies upon the coast line, would be, in effect, declaring that that city enjoys a harbor of a character which nature has not granted to her and transportation advantages which are not existent.”

XII.

The contention under this point of opposing counsel that this Court is precluded from considering the question of the reasonableness of the Interstate Commerce Commission's order in this case because the Commission had before it and considered a great number of facts and circumstances in determining the question of the unreasonableness of the Paducah rate, can not prevail for the reason that it was the duty of the District Court and it is the duty of this Court, as we understand the law, to see that the Commission give effect to these competitive conditions which exist at Cairo and do not exist at Paducah, about which there was absolutely no controversy in the record. The Commission simply arbi-

trarily ignored these facts and made its finding on a mileage basis, regardless of every other consideration, because it did not find, as we have said, that the Paducah rate was intrinsically unreasonable. These facts, under the ruling of the **Louisville & Nashville R. R. Case, 227 U. S. 91-92-93**, left these questions open for this Court's determination as to whether the Commission gave effect to undisputed evidence and took into consideration proper elements or improper ones in reaching its conclusion as to the reasonableness of the Paducah rate or the discriminatory character thereof. As we have said, it had no right to consider the constructive mileage it did consider and insists upon considering, nor had it any right to require us to haul this traffic to Paducah, which is necessarily a two-line haul at a rate which the Commission has only held is reasonable for a one-line haul, viz, to Cairo, nor had it any right to require the Iron Mountain and the Cotton Belt Railways to meet the short-line mileage of the Rock Island Railway, but, if it had any authority to establish joint through routes at all, it must have been on the basis of an average mileage via all the lines interested, instead of the short-line mileage via the Rock Island.

We therefore respectfully submit that the Interstate Commerce Commission's order in this case

should be set aside and the judgment of the District Court, denying our temporary injunction, should be reversed.

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St. Louis, Mo., October 6, 1917.

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In the Supreme Court of the United States.

OCTOBER TERM, 1917.

THE ST. LOUIS SOUTHWESTERN RAIL-
way Company, St. Louis, Iron
Mountain & Southern Railway,
et al., appellants.

v.

THE UNITED STATES AND INTERSTATE
Commerce Commission.

No. 199.

APPEAL FROM THE DISTRICT COURT OF THE UNITED
STATES FOR THE WESTERN DISTRICT OF KENTUCKY.

BRIEF FOR THE UNITED STATES.

STATEMENT OF THE CASE.

This is an appeal by the railroads commonly known as the "Cotton Belt," the "Iron Mountain," the "Rock Island," and the Louisiana & Arkansas from a decree of the District Court for the Western District of Kentucky. (234 Fed. 668.) The decree denies an injunction against the enforcement of an order of the Interstate Com-

merce Commission. This order required the appellants and other carriers to establish, *via either Memphis or Cairo*, through routes from certain lumber territory, lying southwest of Memphis, to Paducah, and to make a joint through rate to Paducah not higher than the existing joint rate to Cairo of 16 cents.

THE FACTS.

Paducah and Cairo are rival lumber-dealing and manufacturing cities about 40 miles apart and on opposite banks of the Ohio River, Cairo being at the conjunction of that river with the Mississippi, the population of the former being about 25,000, and the latter about 17,000. Both obtain a large part of their lumber and logs from the territory southwest of Memphis.

The appellant railroads all operate in this territory. Shipments originating on the Louisiana & Arkansas are delivered by it to some one of the other appellants at points within the territory. The other three appellants operate into Memphis, either on their own rails or under contracts with other carriers. The Cotton Belt and Iron Mountain also operate, on the west side of the Mississippi, to Ilmo, Mo., and thence across the Mississippi to Thebes, Ill., about 29 or 30 miles north of Cairo and on the opposite bank of the Mississippi. Lumber destined for either Cairo or Paducah must go first either to Memphis or Thebes. From Memphis to either Cairo or Paducah

it goes, on the east side of the Mississippi, over a line of the Illinois Central, which extends to a point some miles south of these cities and then branches, one branch passing through Cairo and the other going to Paducah, the distance of each from Memphis being 169 miles; or to Paducah it may also go, by a somewhat more circuitous route, over the Nashville, Chattanooga & St. Louis. From Thebes to Cairo it goes about 34 miles over the line of the Illinois Central, the Iron Mountain, or one other road; and from Cairo to Paducah the only route is the Illinois Central. The route via Memphis to *Paducah* contains the same mileage as the route via Memphis to *Cairo*. It is from 40 to 60 miles shorter than the route via Thebes and Cairo to Paducah. A map showing the general situation as described will be found at page 184 of the record.

Through routes from the lumber territory to Memphis and to Cairo had long been established, together with a blanket joint rate of 14 cents to Memphis and 16 cents to Cairo.

There were no through routes to Paducah which had only a combination rate, constructed by adding to the Cairo joint rate of 16 cents the local rate of 6 cents, or to the Memphis joint rate of 14 cents the local rate of 8 cents, making the rate to Paducah, in each case, 22 cents as against 16 cents to Cairo.

HISTORY OF THE CONTROVERSY.

When the through routes to Cairo were established the development of yellow pine in the territory in question was in its infancy. There was a strong prejudice in the markets against it. Hence, in order to make a market for it and enable it to compete, the carriers were obliged to make very low rates, and the joint rate to Cairo was fixed at 13 cents. The prejudice gradually disappeared and, as it did, the rate was increased from time to time until it was fixed at 16 cents.

The carriers made an effort to increase the rate to 17 cents. But the commission, after a full hearing, found the proposed increase not reasonable and the 16-cent rate to Cairo not unremunerative (34 I. C. C., 652), and the carriers acquiesced.

Paducah being dissatisfied with its 22-cent rate, its board of trade filed a petition attacking that rate as unreasonable and as unjustly discriminatory in favor of Cairo. The Commission sustained both contentions and found that the natural route to Paducah was via Memphis; that the route via Cairo was unreasonably long when compared with the natural route via Memphis; and that the carriers should establish through routes *via either Memphis or Cairo* to Paducah and should make joint rates applicable thereto not higher than the existing rates to Cairo. But because the petition did not contain a prayer for the establishment of through routes and joint

rates no order was made establishing them. (29 I. C. C., 583.)

The carriers did not conform to the views expressed by the Commission, and the Paducah Board of Trade filed a second petition, in which it specifically prayed for the establishment of through routes and joint rates. The Commission adhered to its former holdings and ordered through routes and joint rates to be established *via either Memphis or Cairo*, the rates not to be higher than the present rates to Cairo. (37 I. C. C., 719.) And the District Court has refused to enjoin the enforcement of this order.

BRIEF OF ARGUMENT.

1. Congress had power to enact the law requiring the establishment of through routes and joint rates.

Atlantic Coast Line v. Riverside Mills,
219 U. S. 186, 204.

Galveston, H. & S. A. Ry. Co. v. Wallace,
223 U. S. 481, 491.

Norfolk & Western Ry. Co. v. Dixie Tobacco Co., 228 U. S. 593.

Tap Line Cases, 234 U. S. 1, 28.

O'Keefe v. United States, 240 U. S. 294,
301.

Interstate Commerce Commission v. Northern Pacific Ry. Co., 216 U. S. 538, 543.

Minneapolis & St. Louis R. R. Co. v. Minnesota, 186 U. S. 257.

Michigan Central R. R. Co. v. Michigan R. R. Commission, 236 U. S. 615.
Wisconsin, &c. R. R. Co. v. Jacobson, 179 U. S. 287.

2. The order attacked is clearly within the power of the Commission and is not subject to review unless it appears that some of the carriers have been deprived of their long haul contrary to section 15 of the act to regulate commerce, and unless the maximum joint rates fixed are unreasonable and unjust to the carriers.

Ch. 3591, 34 Stat. 584, 590.

Interstate Commerce Commission v. Northern Pacific Railway Co., 216 U. S. 538.

Ch. 309, 36 Stat. 539, 552.

3. The order sought to be enjoined does not deprive any carrier of its rightful long haul. (R., p. 16.)

4. There is no reason why Paducah should not be given through routes and every reason why it should.

Minneapolis & St. Louis R. R. Co. v. Minnesota, 186 U. S. 257, 262.

Chicago, &c., Ry. Co. v. Tompkins, 176 U. S. 167.

5. It was not necessary that the commission should name the particular railroads to constitute the through route. But if it was necessary, the error in failing to do so was in favor of the appellants, and they can not complain.

Clark v. Kansas City, 176 U. S. 114.

Smiley v. Kansas, 196 U. S. 447.

Interstate Commerce Commission v. Chicago, &c., Ry. Co., 218 U. S. 88.

O'Keefe v. United States, 240 U. S. 294, 304.

Cincinnati, H. & D. Ry. Co. v. Interstate Commerce Commission, 206 U. S. 142.

6. The order permitted the use of the route via Cairo as well as the route via Memphis. Hence, the question as to whether the Cairo route was unreasonably long, and the incidental question as to whether constructive mileage on account of the Cairo bridge should be counted, were immaterial.

7. Under the facts of this case a joint rate to Paducah higher than that to Cairo would manifestly be both unreasonable and unjustly discriminatory.

8. The fact that none of the lines of appellants reaches Paducah can not deprive the commission of the power to prevent the existing unjust discrimination by establishing through routes and joint rates.

St. Louis, I. M. & Southern Ry. Co. v. United States, 217 Fed. 80.

Penn Refining Co. v. Western New York & Penn. R. R. Co., 208 U. S. 208.

C., N. O. & T. P. Ry. Co. v. I. C. C., 162 U. S. 184.

9 If the rate to Paducah is unjustly discriminatory, the commission could require a lower rate to be made, even though it might not be *per se* unreasonable. But the commission has expressly found that it is unreasonable. (R., p. 23.)

10. The record does not show that any conditions of water competition exist at Cairo which do not also exist at Paducah.

11. The findings of the court as to discrimination and unreasonableness of rates are manifestly supported by evidence and are, therefore, conclusive.

United States v. Louisville & Nashville R. R. Co., 235 U. S. 314.

Interstate Commerce Commission v. Illinois Central R. R. Co., 215 U. S. 452.

Interstate Commerce Commission v. Delaware, L. & W. R. R. Co., 220 U. S. 235.

Interstate Commerce Commission v. Louisville & Nashville R. R. Co., 227 U. S. 88.

East Tenn. &c., Ry. Co. v. Interstate Commerce Commission, 181 U. S. 1, 23-29.

ARGUMENT.

I.

Power of Congress to require interstate carriers to establish through routes and joint rates.

The appellants challenge the power of Congress, hitherto unquestioned, to require carriers "to establish through routes and just and reasonable rates applicable thereto" (ch. 3591, 34 Stat. 584, 590; ch. 309, 36 Stat. 539, 552). The contention is that the establishment of through routes and joint rates, against the will of the carrier, takes away from it the right to contract, forces upon it a part-

nership or agency with other carriers, and thus deprives it of its property without due process of law.

This is the same attack that was made on the Carmack amendment (ch. 3591, 34 Stat. 584, 595), which required interstate carriers to issue through bills of lading, and made the initial carrier liable to the shipper for loss or damage occurring on any line in the route.

But this court held:

(1) The effect of the amendment was "to deny to such an initial carrier the former right to make a contract limiting liability to its own line." (P. 201.)

(2) "There is no such thing as absolute freedom of contract," and "the power of Government extends to the denial of liberty of contract to the extent of forbidding or regulating every contract which is reasonably calculated to injuriously affect the public interests." (P. 202.)

(3) In the exercise of this power, it may be enacted that a carrier receiving an interstate shipment shall be deemed, notwithstanding any stipulation to the contrary, to have adopted as its agent the connecting carriers.

(4) Congress has power to compel co-operation by connecting lines to the end of achieving "oneness of charge, continuity of transportation, and primary liability of the receiving carrier." (P. 205.)

Atlantic Coast Line v. Riverside Mills,
219 U. S. 186, 201-205.

The act then in question did not purport to compel any carrier against its will to accept an interstate shipment, but only prescribed the duties and liabilities to which it should be subject if it did so. (Id., 204-5.) This was the construction placed upon it in the *Riverside Mills Case*, *supra*, and reaffirmed in *Galveston, Harrisburg & San Antonio Railway Company v. Wallace*, 223 U. S. 481, 491. And later it was held that the duties and liabilities so imposed could not be avoided, even though the shipper and not the railroad chose the route and selected one, partly by water, which the receiving carrier would not have selected and with which it had not established through routes and rates.

Norfolk & Western Railway Co. v. Dixie Tobacco Co., 228 U. S. 593.

With these propositions settled nothing is left for the support of the present attack.

The same considerations of public interest which were held to justify the requirement, by the Carmack amendment, of "oneness of charge, continuity of transportation, and primary liability of the receiving carrier," equally justify the requirement, by the act now assailed, that the one charge shall be just and fair and the continuity of transportation by a route not unreasonably long.

In the *Riverside Mills Case*, *supra*, Mr. Justice Lurton said that the record presented no question as to the right of the initial carrier to refuse a shipment for a point beyond its own lines, necessi-

tating a through route or joint rate over other lines, and added:

“ We, therefore, refrain from any consideration of the large question thus suggested.” (219 U. S. 204.)

Apparently, this is the text for the present contention of appellants. But the act now in question does not, any more than the Carmack amendment, require any carrier to receive an interstate shipment against its will. Congress has simply said, by the Carmack amendment, that if a carrier chooses to receive an interstate shipment, thereby voluntarily engaging in interstate commerce, it shall handle such shipment subject to prescribed regulations. The requirement that through routes and joint rates shall be established is a part of the same act. It applies to no carrier except those who have voluntarily elected to do interstate business by accepting interstate shipments. Hence, the question reserved in the *Riverside Mills Case* no more arises in this case than it did in that.

It is not necessary to inquire whether Congress could require a carrier against its will, chartered and lying wholly within a given State, to receive freight destined for points beyond its own line or to become a part of a through route for interstate transportation, for the double reason that neither Congress nor the commission has attempted anything of the kind, and no one of the appellants lies wholly within one State, and each

of them described itself in the bill as a carrier engaged in interstate commerce.

While it may not be said that there is any case decided by this court which expressly passes on the power of Congress to require through routes and joint rates, the court has repeatedly dealt with questions growing out of orders of the Commission establishing such routes and rates and always, apparently, without any misgivings as to the validity of the legislation now challenged. And in at least one case it has been said that it is not only within the *power* but is the *duty* of the Commission, where joint rates have been so established, to see that they are fairly and justly apportioned among the participating carriers in accordance with the power conferred by the act.

Tap line Cases, 234 U. S. 1, 28-9.

O'Keefe v. United States, 240 U. S., 294, 301.

Interstate Commerce Commission v. Northern Pacific Railway Co., 216 U. S. 538, 543.

Moreover, it can not be claimed that the power of Congress to regulate carriers engaged in *inter-state* commerce is any more limited than the power of a State over railroads engaged in *intra-state* commerce. And this court has sustained statutes of the States which required through rates and similar regulations for intrastate traffic.

Minneapolis & St. Louis R. R. Co. v. Minnesota, 186 U. S. 257.

*Michigan Central R. R. Co. v. Michigan
Railroad Commission*, 236 U. S. 615.

Wisconsin, &c., R. R. Co. v. Jacobson,
179 U. S. 287.

II.

There being no through route to Paducah, the power of the commission to establish one was absolute, and its action in this regard is not subject to review unless the particular route established contravenes some requirement of the law.

The determination of the Commission to establish a through route to Paducah involves no question of law which can be reviewed by the courts. Section 1 of the act to regulate commerce, as amended, makes it the duty of carriers—

to establish through routes and reasonable rates applicable thereto. (34 Stat. 584.)

And section 15 confers upon the Commission power to require them to be established. The only limitation which the act conferring this power placed upon its exercise was in the proviso—

provided no reasonable or satisfactory through route exists. (34 Stat. 584, 590.)

Under that act the Commission established a second route where one already existed, ruling that, upon the facts which it found, the first was not reasonable or satisfactory. In this court, it was insisted that the opinion of the Commission was conclusive and not subject to review. But Mr. Justice Holmes said that a question of law

was involved in determining whether, upon a given state of facts, a particular route was reasonable or satisfactory. And, reviewing the facts found, the court held that one satisfactory route already existed and that, therefore, the Commission was without power to establish another. (*Interstate Commerce Commission v. Northern Pacific Ry. Co.*, 216 U. S. 538, 544-545.) This case, decided March 7, 1910, made it plain that, however desirable it might be to have *more than one* reasonable or satisfactory route between given points, the Commission was without power if *one* already existed. Presumably, Congress felt that this excluded the Commission from a field in which its activities would be of value to the public. At any rate, it passed the amendatory act of June 18, 1910 (36 Stat. 539), which struck out entirely the proviso above quoted and inserted instead a provision that, in establishing any route, the Commission should not require—

any company, without its consent, to embrace in such route substantially less than the entire length of its railroad and of any intermediate railroad operated in conjunction and under a common management or control therewith which lies between the termini of such proposed through route, unless to do so would make such through route unreasonably long as compared with another practicable through route which could otherwise be established. (P. 552.)

Manifestly under this act the only limitation upon the *power* of the commission is found in the concluding words of the language quoted. Unless, therefore, the order of the commission has the effect of denying to some carrier a long haul to which it is entitled, and thus comes in conflict with this limitation, there is nothing in it, in so far as it establishes through routes, which is subject to review.

III.

No carrier deprived of its rightful long haul.

It is insisted that the order establishing through routes via Memphis can not be sustained because there is no evidence to justify a finding that the route via Cairo is unreasonably long, and hence it is said two of the appellants are deprived of the long haul to which they are entitled. But this contention entirely loses sight of the terms of the order that was made. No carrier is required to haul from the territory in question over any different route from that now in use by it. No carrier is required to haul *via Memphis* if, for any reason, it prefers to haul *via Cairo* and thereby get a longer haul. The route via Memphis is not established as a substitute for the one via Cairo, but as an additional route. Or rather, upon an application for the establishment of a through route where one has not before existed, the commission has ordered that it be established, but has

given the carriers their choice between two available routes, either of which they are permitted to use. The language of the order only requires the carrier to establish through routes *via either Memphis or Cairo*. (Rec. p. 16.)

There are now two routes from the territory in question over which freight is, in fact, carried to Paducah, one via Memphis and the other via Cairo. The commission has simply said to the carriers, whichever of these routes you choose to use shall be deemed a through route and you shall accordingly apply to it joint rates.

If the commission had undertaken to establish the Memphis route to the exclusion of the Cairo route, the argument of counsel would be at least pertinent, but since this has not been done we can not, so far as relates to through routes, be concerned with whether the Cairo route is unreasonably long. The validity of the order in question by no means depends, as assumed by appellants, upon a finding that the route via Cairo is unreasonably long. If the effect of the order was to require the carriers to abandon that route and accept a shorter haul, such a finding would be essential. But the order merely establishes, along with the Cairo route, another through route and leaves each carrier free to use that which will give it the longest haul. Certainly, then, no injury is done the carriers and they are deprived of no right given them under section 15 by the estab-

lishment of the alternative route via Memphis. If through routes to Paducah are to be established at all, an order more favorable to the carriers could not be made.

IV.

If order establishing through routes was subject to review, there is no reason for denying and every reason for granting through routes to Paducah.

But if it could be said that the order, in so far as it establishes through routes, involves a discretion which may be reviewed by the courts, what reason can be suggested for denying to any city of 25,000 inhabitants through routes from territory tributary to it?

Whatever may be said of points to which only occasional shipments are made, whatever may be said of the duty of railroads with respect to a single shipment to a distant and unusual point, it is idle to say that any reason exists for denying to a city like Paducah, to which large shipments are constantly made from a given territory, *through routes*, with their accompanying advantages, from that territory. It may be that a neighboring city is so situated as to be entitled to *lower joint rates*, but surely both are entitled to *through routes* and to such joint rates as in each case will be just and reasonable. Whatever considerations might properly enter into the determination of the question, if Paducah already had a *through* route from this territory and was ask-

ing for an additional route, there can, it would seem, be no possible reason for denying her at least *one through route* where she has *none*.

The object of the act to regulate commerce is to secure to *all places* reasonable rates and rates that are not unjustly discriminatory. One of the chief instruments for accomplishing this is the establishment of through routes, thereby giving one joint rate instead of a rate composed of a combination of local rates. Each of the rates in such a combination may, as a local rate, be entirely reasonable and yet the combination may be, and generally is, as a rate for a through shipment, unreasonably high. The reasons were stated by this court in *Minneapolis & St. Louis R. R. Co. v. Minnesota*, 186 U. S. 257, 262.

The order establishing through routes was, therefore, not only justified, but was imperatively required if the act was to be given the effect intended, and the order as made was proper, since it appears that no carrier has been deprived of its rightful long haul, unless the rates fixed are unreasonable.

V.

Propriety of order in question to be determined without reference to consequences flowing from Carmack amendment.

It is said that, assuming that the commission has the power, in a proper case, to require through routes and joint rates, that power should be exer-

cised sparingly and only in the face of urgent necessity therefor, on account of the grave consequences resulting from the partnership enforced by the application of the Carmack amendment.

But the establishment of through routes and joint rates can add nothing to the consequences of the Carmack amendment. Whatever enforced "partnership" there may be results from the Carmack amendment itself. In the case of shipments to Paducah from every point on the lines of appellants, the delivering carrier is now and must be either the Illinois Central or the Nashville, Chattanooga & St. Louis. The appellants are, therefore, already as much in "partnership" with these roads as they will be when through routes are established, using, of necessity, these same roads.

Clearly, then, the propriety of the order in question must be determined without reference to any consequences flowing from the Carmack amendment.

VI.

Not necessary for order to name connections via which through routes should be established.

The argument of counsel seems to be, in one breath, that the order in question is void because it designates *no* connecting line between Memphis and Paducah as part of the through route, and, in the next breath, that it is void because it does

designate *all* the lines between Memphis and Paducah as parts of the routes established.

What the Commission, in fact, did was to order that all the carriers before it, "in so far as they participate in the traffic," be notified to cease charging the combination rates then in effect and to establish through routes and joint rates. (R., p. 16.) The order applied alike to the carriers east and those west of the Mississippi. Every carrier was left at liberty to carry the traffic over the route it was then using, but this route was to be deemed a through route and joint rates were to be applied to it.

Before the amendments of 1906 and 1910, the establishing of through routes was purely a matter of contract between the carriers. Surely the carriers can not be heard to complain if, in the exercise of the power conferred by these amendments, the Commission has left to them some measure of this right to contract. If the carriers west of the Mississippi had been ordered to carry all Paducah traffic to Memphis and there establish a through route via one connecting line to the exclusion of all others, they might have had just ground to complain. They might say, with reason, that they could serve the public and Paducah just as well by carrying the traffic via Cairo and thus obtain a longer haul for themselves, or by using one of the excluded connecting carriers from Memphis to Paducah from which it might be able

to obtain a more advantageous division of the rate. They would be sure to say that from Memphis to Paducah two lines, the Illinois Central and the Nashville, Chattanooga & St. Louis, are available for a through route, and that, with these two lines competing, the western roads could secure a better division than if they were peremptorily required to deal only with either one.

On the other hand, if the order had required the route from Memphis to be via the Illinois Central, the Nashville, Chattanooga & St. Louis could very justly claim that it was discriminated against and denied the right to compete for business which it could handle without injury to the public interest.

These are things which, in justice to all, the order avoids. For the establishment of particular routes the carriers are left free to contract among themselves under conditions that will enable each to retain the advantages to which its position entitles it. And justice, as between themselves, is further assured by the power of the commission to make, on the complaint of any carrier, a fair division of the rate if this is not accomplished by agreement.

Of course, if the western carriers, in order to reserve to themselves a longer haul, or for other reasons of their own, shall establish a route which is unreasonably long, the commission will have the power to require the abandonment of such route.

If, as found by the commission on the first hearing, the route via Cairo is unreasonably long as compared with that via Memphis, shippers might have reason to complain of the order, but the appellants, the carriers who are thus favored by it, have not.

The Paducah Board of Trade prayed for a through route via Memphis. The commission ordered it and the board of trade does not complain because it was not made the only through route, to the exclusion of the Cairo route. Surely the appellants can not be heard to complain, because they are given their choice among a number of routes instead of being confined to one.

Clark v. Kansas City, 176 U. S. 114.

Smiley v. Kansas, 196 U. S. 447.

Interstate Commerce Commission v. Chicago, Rock Island & Pacific Ry. Co., 218 U. S. 88.

O'Keefe v. United States, 240 U. S. 294, 304.

Moreover, the commission is not limited in the relief it grants to the specific wording of the prayer, but may grant such relief as may be justified, or such part of the prayer as may be in conformity to the requirements of the act to regulate commerce.

Cincinnati, Hamilton & Dayton Ry. Co. v. Interstate Commerce Commission, 206 U. S. 142.

VII.

Constructive mileage of Cairo bridge.

It is complained that the commission gave some consideration to the constructive mileage to be allowed on account of the bridge at Cairo in reaching the conclusion that the Cairo route was unreasonably long. But since, as we have seen, by permitting the use of this route at the option of the carriers, the order actually made is not based on this finding and does not take from any carrier its long haul, it becomes wholly immaterial whether the Cairo route is unreasonably long or what the commission may have considered in reaching that conclusion.

VIII.

Paducah being equally as favorably situated with respect to traffic in question as Cairo, and 16 cents having been found to be a reasonable rate to Cairo, a higher rate to Paducah would be both unreasonable and discriminatory.

The commission having established alternative through routes, the duty, of course, followed to fix the maximum joint rate to be charged, whichever route the carriers elected to use. And this rate must not only be reasonable, but it must not be unjustly discriminatory.

The rate of 16 cents to Cairo had been found to be reasonable for hauls of from 250 to 600 miles. This rate, originally fixed at 13 cents, had been raised to meet changed conditions, and the

commission had found it reasonable to the shippers. And on an application for a further increase it had been found to be reasonable and remunerative to the carrier.

Over this route traffic to both Cairo and Paducah moves over the same lines to Thebes. From Thebes it moves 29 or 30 miles to Cairo over the Illinois Central or one of two other lines. From Cairo to Paducah the only line is the Illinois Central. Thus a through route to Paducah will be but a 40-mile extension of the existing through route to Cairo. The combination rate of 22 cents consisted of the reasonable through rate to Cairo plus the local charge of 6 cents to Paducah. Assuming that this 6 cents, as a local charge, was reasonable, it by no means follows that, as a part of joint through rate, it would not be extremely unreasonable. To continue the rate of 22 cents to Paducah in force as a through rate would be to say that while 16 cents is a reasonable charge for a haul of 500 miles by several carriers it is also reasonable to permit the last carrier to charge 6 cents for extending its haul only 40 miles. It can scarcely be necessary to say anything else in support of the finding that a rate of 22 cents to Paducah is unreasonable.

But to what extent is it unreasonable? If only the route via Cairo could be considered, the utmost that the carriers could, with any show of reason, claim would be that they ought to be permitted to add to the 16-cents rate such an amount

as would be fair compensation for the additional forty-miles haul, not as a local charge, but as a part of a through rate.

But Paducah is not so situated that its traffic from this territory must move via Cairo. It has other railroad facilities available for that traffic. The Rock Island, the Iron Mountain, and the Cotton Belt all enter Memphis on their own rails or by contract with other roads. From Memphis to Paducah there are two routes, one of which is from 40 to 60 miles shorter than that via Cairo, even without counting any constructive mileage on account of the Cairo bridge. The commission has found that the natural route to Paducah is via Memphis. Nothing more than a glance at the map is necessary to support this finding. If, therefore, the carriers are permitted to use a longer route, one in the opinion of the commission, even unreasonably long, no injustice is done them if they are required to make the rate no higher than a reasonable rate for the shorter route. The question then is, what would be a reasonable rate to Paducah via Memphis. Here again, the commission started with the established fact that a reasonable rate to *Cairo* via Memphis is 16 cents. But it appeared that, from Memphis, traffic to both cities moved over the rails of the same company, that it moved over the very same rails until within a few miles of both, and that the railroad then branched, one branch going to each, and that each was the same distance from Memphis. But two differences appeared,

and both were in favor of Paducah. From Memphis to Cairo there was but one line of railroad, while to Paducah there were two competing lines. And traffic to Cairo had to cross an expensive bridge, for which a constructive mileage might properly be considered in determining the rate that would be reasonable. These facts, therefore, having led to the conclusion that 16 cents is a reasonable rate to Cairo, might justify a somewhat *lower* rate to Paducah, but preclude the possibility of a *higher* rate being reasonable.

It seems very clear that the joint rate to Paducah could not be made higher than that to Cairo without violating the law against unjust discriminations, unless the record presents for consideration something not thus far considered.

IX.

That no line of the appellants reaches Paducah immaterial.

The argument is made that the appellants can not be guilty of discriminating against Paducah because no one of them has a line reaching that city. The soundness of this argument might be conceded without affecting the integrity of the commission's order. Having established through routes, the duty followed to fix maximum rates. And if the maximum fixed is reasonable, as we have seen it is, the order is valid, whether or not these particular appellants were guilty of partici-

pating in the discrimination which had, in fact, been practiced.

But the argument is unsound. If it could prevail to the destruction of the order made by the commission in this case, the power conferred by Congress to establish through routes and joint rates is no power. Every attempted exercise of it could be defeated by letting the carrier whose line reaches the locality in question acquiesce, as the Illinois Central did in this case, and then having some connecting carrier make the point, as appellants have done, that its line does not reach that locality. The commission was not that impotent even before it had the power to establish through routes. Long before the passage of the amendments of 1906 and 1910 this was settled in the Social Circle case. In that case the court held that when a railroad accepted a shipment for carriage over its own lines and the lines of other companies, the several companies were engaged in transportation "under a common control, management, or arrangement for a continuous carriage or shipment," even though they took care not to establish through routes or joint rates and though one company had no part in fixing the charges of the others. Accordingly, there was sustained an order of the commission which condemned the aggregate of the charges made by the three railroads solely upon the ground that the result was an unjust discrimination against Social Circle in favor of Augusta. (*Cincinnati, New Orleans & Texas*

Pacific Railway Co. v. Interstate Commerce Commission, 162 U. S. 184.) True, there may be things done by one carrier, in which connecting carriers do not participate, which result in a discrimination. And it may well be said that relief from this character of discrimination must be had only against the guilty carrier. Thus, in *Penn Refining Co. v. Western New York & Pennsylvania R. R. Co.*, 208 U. S. 208, cited by counsel, where discrimination against oil shipped in barrels in favor of oil shipped in tanks was charged because, as to the former, the rate was based on the weight, including that of the barrels, while as to the latter, the weight of the tank was excluded, this court held that if there was discrimination it was not in the rate but in the fact that the initial carrier furnished tanks to some shippers and not to others. And for this it was held that connecting carriers could not be required to make reparation.

The other case cited is *St Louis, Iron Mountain & Southern Ry. Co. v. United States*, 217 Fed. 80. While we think this case is in direct conflict with the *Social Circle case*, it by no means supports the contention of appellant. It went off on the ground that the order was based on a petition which did not ask for a through route. And the court was careful to say that if the petition had contained such a prayer the commission would have had the power to remove the discrimination, which in fact existed, by doing what it did in this case.

Moreover, it is common knowledge that actual discrimination may, and often does, result from the giving of joint through rates to one locality and only a combination of local rates to another. This character of discrimination is produced not by the *act* of any one railroad, but by the *failure to act* of all concerned. It was to prevent just this kind of discrimination that Congress conferred upon the commission the power to compel through routes with their accompanying joint through rates.

X.

Existing rate of 22 cents to Paducah found to be unreasonable.

It is said that the commission has not found that the existing rate to Paducah is *per se unreasonable*, but only that it is unreasonable as compared with the rate to Cairo.

But the finding is:

We further find that the rates on logs and lumber to Paducah from points of origin in the territory involved are unreasonable to the extent that they exceed the present rates to Cairo. (Rec. p. 14.)

This is an additional finding following immediately one that this rate is discriminatory. The finding that the rate is unreasonable is unqualified. The reference to the Cairo rate, which had been found to be reasonable, was for the purpose not of

limiting the finding but of indicating the extent to which the Paducah rate was unreasonable.

But even if the Paducah rate had been reasonable *per se*, it would have been condemned if "unreasonable as compared with the Cairo rate," because it would have resulted in an unjust discrimination in favor of Cairo. This is expressly recognized in one of the cases cited by counsel, *Atlantic Coast Line v. Interstate Commerce Commission*, 194 Fed. Rep. 449. The other cases cited involved no question of discrimination. (*Interstate Commerce Commission v. Louisville & Nashville R. R. Co.*, 227 U. S. 88; *Interstate Commerce Commission v. Stickney*, 215 U. S. 98.)

XI.

Water and rail competition at Cairo.

It is complained that the commission ignored "competitive conditions of water and rail competition" existing at Cairo which did not exist at Paducah. But counsel's own statement of the record puts this question out of the case. Both cities are located on the same navigable river, the Ohio, and only 40 miles apart, and both thus have ready access to the Mississippi, into which the Ohio flows at Cairo. It may be assumed, therefore, that water transportation is available for some part of the traffic going to both. No effort was made to show that the competition between water and rail lines was any keener at one than the other. All that the railroads attempted to do was to show the

proportion of the log and lumber traffic of *Cairo* that moved by water during certain periods. But, as counsel themselves say (Brief, p. 56), they left the record entirely silent as to the extent of river transportation to Paducah. All that appeared, therefore, was that the two cities had exactly the same facilities for water transportation. From this the commission would not, of course, have been justified in concluding that either had any advantage over the other in this respect.

The cases cited do nothing more than hold that, in determining whether an unreasonable preference has been given contrary to sections 3 and 4 of the act to regulate commerce, competitive conditions at a given point are to be taken into consideration.

Texas & Pacific Railway Co. v. Interstate Commerce Commission, 162 U. S. 197, 233.

Interstate Commerce Commission v. Alabama Midland Railway Co., 168 U. S. 144.

But here no difference was shown between the conditions of water competition at the two points.

XII.

Findings as to discrimination and unreasonableness of any higher rate to Paducah than to Cairo supported by evidence and conclusion.

Enough has been said to show that, in concluding that the combination rate to Paducah or any

other rate higher than that to Cairo would, as a joint through rate, be both unreasonable and discriminatory. The Commission had before it and considered a great number of facts and circumstances. The question of the correctness of its findings in this regard is, therefore, foreclosed.

United States v. L. & N. R. R. Co., 235 U. S. 314, 320.

Interstate Commerce Commission v. Illinois Central R. R., 215 U. S. 452.

Interstate Commerce Commission v. Delaware L. & W. R. Co., 220 U. S. 235.

Interstate Commerce Commission v. L. & N. R. R. Co., 227 U. S. 88.

East Tenn. &c. Ry. Co. v. I. C. C., 181 U. S. 1.

CONCLUSION.

The power to establish through routes and joint rates was added to the original powers of the commission in order to put in its hands a more effective instrument for the accomplishment of the object of its creation, the prevention of unjust discrimination.

In the exercise of this power, while the interests of the carriers as well as of the localities they serve are to be given due consideration, "the outlook of the commission and its powers must be greater than the interest of the railroads or of that which may affect those interests. It must be as comprehensive as the interest of the whole country."

Interstate Commerce Commission v. Chicago, Rock Island & Pacific R. R. Co.,
218 U. S., 88, 103.

In the present case it has most admirably conformed to this conception of its duties and powers. It found two cities so situated that they were substantially on an equality as regards facilities for transportation from a given territory. And yet one of them enjoyed much lower rates than the other. It has remedied this by exercising its power to establish through routes to Paducah and requiring that the rates applicable thereto shall not be higher than those to Cairo. It has not, as it might have done, in view of its finding that the route via Cairo was, in comparison, unreasonably long, made the new route via Memphis exclusive. But giving consideration to the interests of the carriers, it has left open to them both routes, attaching only the condition that, in the matter of rates, Paducah shall be kept on an equality with Cairo, as its position entitles it to be kept.

It is respectfully submitted that there is nothing in the order of the commission or the decree of the court below of which the appellants can justly complain.

WILLIAM L. FRIERSON,
Assistant Attorney General.

ALEX KOPLIN,
Attorney.

OCTOBER, 1917.

In the Supreme Court of the United States.

OCTOBER TERM, 1917.

THE ST. LOUIS SOUTHWESTERN RAILWAY Company, St. Louis, Iron Mountain & Southern Railway, et al., appellants. v. THE UNITED STATES AND INTERSTATE Commerce Commission.	} No. 199.
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*APPEAL FROM THE DISTRICT COURT OF THE UNITED
STATES FOR THE WESTERN DISTRICT OF KENTUCKY.*

SUPPLEMENTAL BRIEF FOR THE UNITED STATES.

In the brief for the United States, the statement made at page 56 of the brief for appellants that the record was silent "as to the extent of river transportation to Paducah" was adopted.

In a supplemental brief, counsel for appellants seem to question the correctness of this statement, first made by them, and quote two statements of a witness to show that there was no water traffic in lumber at Paducah. But they were correct in their first statement. The witness referred to was the representative of a railroad operating east of the Mississippi, and the statements quoted were expressly

limited to shipments of hardwood. He says nothing about shipments of pine by water to Paducah. (Rec. pp. 268-269.) Furthermore, this witness makes it plain that water competition has no controlling influence on the rates to Cairo from the territory in question, and furnishes ample reason for not considering it. He says:

It is generally known and acknowledged that there is practically no water competition on pine lumber. Pine grows in the interior away from waterways, and the rates on pine are not appreciably affected by that character of competition. (Rec., p. 255.)

He also shows that so far as water competition enters into the fixing of rates, it operates as much in favor of Paducah as Cairo. Thus, he says that in fixing hardwood rates east of the Mississippi water competition forced the giving of the same rates to Paducah that were given to Cairo.

Respectfully submitted,

WILLIAM L. FRIERSON,
Assistant Attorney General.

OCTOBER, 1917.



U. S. SUPREME COURT, D. C.
FILED
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No. 198.

In the Supreme Court of the United States.

OCTOBER TERM, 1917.

**THE ST. LOUIS SOUTHWESTERN RAILWAY COMPANY,
ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAIL-
WAY COMPANY ET AL., APPELLANTS,**

v.

**THE UNITED STATES AND INTERSTATE COMMERCE
COMMISSION, APPELLEES.**

**APPEAL FROM THE DISTRICT COURT OF THE UNITED
STATES FOR THE WESTERN DISTRICT OF KENTUCKY.**

**BRIEF ON BEHALF OF THE INTERSTATE COMMERCE
COMMISSION.**

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Counsel for the Interstate Commerce Commission.

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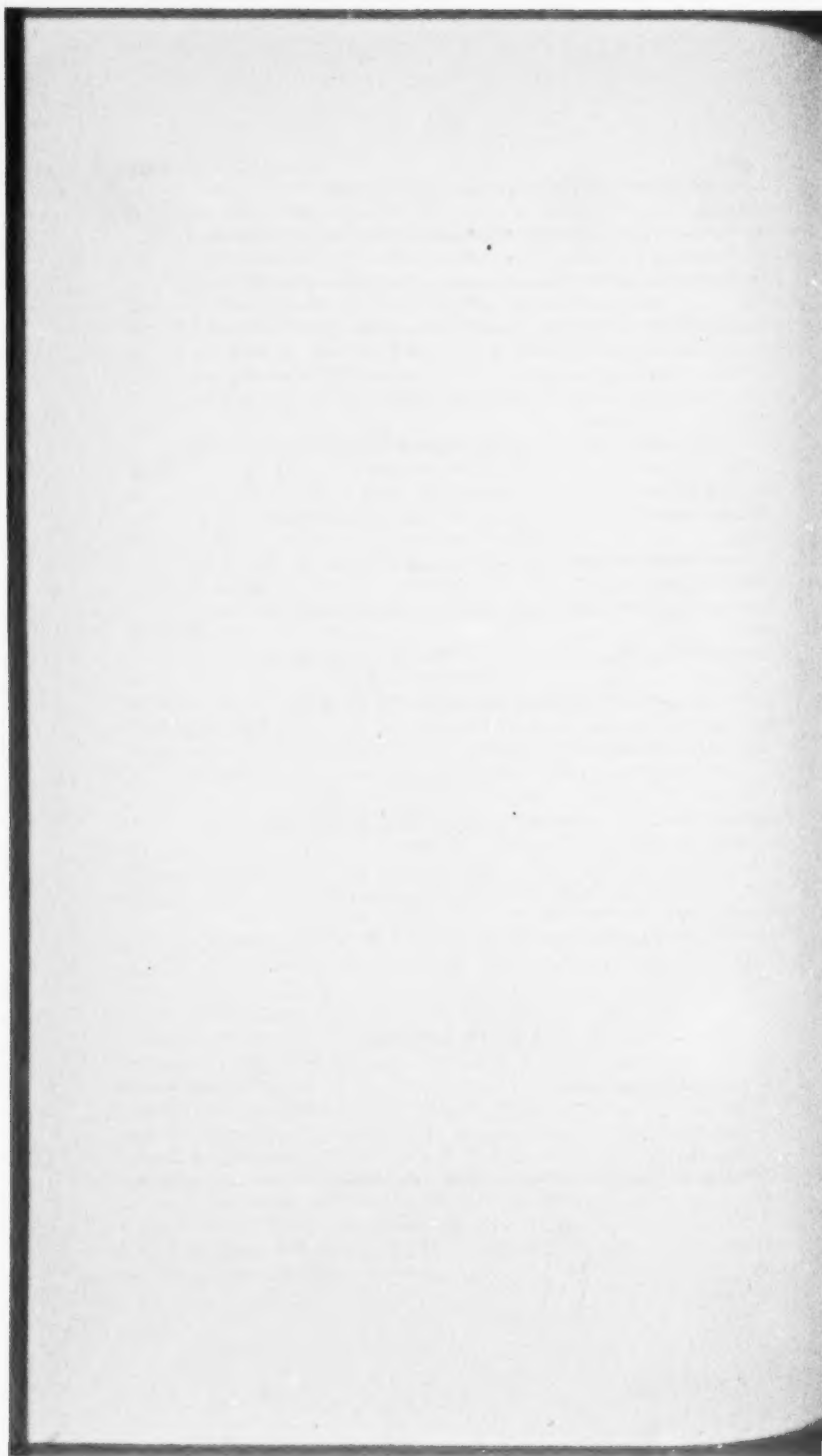
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In the Supreme Court of the United States.

OCTOBER TERM, 1917.

THE ST. LOUIS SOUTHWESTERN RAILWAY
Company, St. Louis, Iron Mountain
& Southern Railway Company et al.,
appellants,

v.

THE UNITED STATES AND INTERSTATE
Commerce Commission, appellees.

No. 199.

APPEAL FROM THE DISTRICT COURT OF THE UNITED
STATES FOR THE WESTERN DISTRICT OF KENTUCKY.

BRIEF ON BEHALF OF THE INTERSTATE COMMERCE
COMMISSION.

STATEMENT.

This is an appeal from a decree of the District Court of the United States for the Western District of Kentucky, Circuit Judge Warrington and District Judges Evans and Hollister sitting, dismissing a petition filed by The St. Louis Southwestern Railway Company, St. Louis, Iron Mountain & Southern Railway Company et al., hereinafter called the appellants, praying that an

order of the Interstate Commerce Commission, hereinafter called the Commission, be enjoined, set aside, and annulled. The order complained of was entered January 21, 1916, upon a complaint filed by the Paducah Board of Trade, of Paducah, Kentucky, alleging that certain rates on logs and lumber were unreasonable and unduly prejudicial to Paducah.

The defendant carriers, including the appellants, answered the complaint, and a full hearing was had before the Commission. The issues raised by the pleadings were: (1) Are the rates on the described traffic to Paducah unreasonable, in violation of section 1 of the Act to regulate commerce? and (2) Did the rates in effect create undue prejudice to Paducah, "to the undue preference and advantage of Cairo," in violation of section 3 of the Act?

The findings of the Commission on these issues were in the affirmative and are set forth in its report (Record, pp. 8 and 17), (*Paducah Board of Trade v. Illinois Central R. Co. et al.*, 37 I. C. C. 719). The order, after making the report a part thereof, reads as follows (Record, pp. 16 and 24):

It is ordered, That the above-named defendants, in so far as they participate in the traffic, be, and they are hereby, notified and required to cease and desist, on or before March 20, 1916, and thereafter to abstain, from publishing, demanding, or collecting their present rates for the trans-

portation of logs and lumber to Paducah, Ky., from points or groups in Arkansas or Louisiana west of the Mississippi River on and south of the line of the Chicago, Rock Island & Pacific Railway from Memphis to Little Rock, Ark., including Des Arc, Ark., which rates have been found in and by said report of the Commission to be unreasonable and unjustly discriminatory.

It is further ordered, That said defendants be, and they are hereby, notified and required to establish, on or before March 20, 1916, upon notice to the Interstate Commerce Commission and to the general public by not less than five days' filing and posting in the manner prescribed by section 6 of the Act to regulate commerce, and thereafter to maintain, through routes for the transportation of logs and lumber via Cairo, Ill., or Memphis, Tenn., to Paducah, Ky., from points or groups in Arkansas and Louisiana west of the Mississippi River on and south of the line of the Chicago, Rock Island & Pacific Railway from Memphis, Tenn., to Little Rock, Ark., including Des Arc, Ark.; and to establish and maintain joint rates to Paducah, Ky., applicable via such through routes not in excess of the rates at present in effect from the same points or groups to Cairo, Ill.

And it is further ordered, That this order shall continue in force for a period of not less than two years from the date when it shall take effect.

To understand the order and determine its validity certain uncontroverted facts and other cases before the Commission between the parties must be stated. A map appended to this brief will assist the Court in understanding the statement of facts.

1. *Competition between Paducah and Cairo.*—Paducah is located in Kentucky on the south bank of the Ohio River, 42 miles east of Cairo. It has a population of about 25,000. Cairo has a population of about 17,000 and is located in Illinois at the confluence of the Mississippi and Ohio rivers east of the Mississippi and north of the Ohio. The principal business carried on in both cities is the manufacture of lumber and buying, assorting, and jobbing in that commodity. The supply of logs for the mills and of lumber for the jobbing trade is obtained from what is known as the southwest territory, embracing parts of the States of Oklahoma, Arkansas, Louisiana, and Texas. The part of this territory lying west of the Mississippi River and south of the line of the Rock Island Railway, including Des Moines, is known as the blanket territory and is shown in shaded lines on the map appended. The rates from every shipping point within this blanket are the same to each point of destination outside of the blanket, regardless of distance. This blanket territory produces principally yellow pine and the rates on logs and lumber from this territory

to Paducah, and a comparison of these rates with the rates from the blanket to Cairo, were the subjects of the investigation and order in question. Rates from other parts of the southwestern territory are not involved in this case.

Gateways.—To reach Paducah and Cairo from this blanket territory the Mississippi River must be crossed, and there are two gateways—the bridge at Memphis, Tennessee, and the bridge at Thebes, Illinois. There was formerly a car ferry with an incline at Bird's Point opposite Cairo, but this incline was destroyed more than two years before the hearing, has not been restored, and the ferry is not used. The natural and shortest route for this traffic to Paducah is *via* the Memphis crossing.

Cairo bridge.—The rail routes on the west side of the Mississippi cross or connect over the Thebes bridge and then cross the Ohio River on the Cairo bridge to reach Paducah. This bridge, with its approaches, is $\frac{3}{4}$ miles long and cost nearly \$4,000,000. It is in the category of extraordinary structures that receive special consideration in rate making. The carriers insist that such structures be given a "constructive mileage" on account of their extraordinary cost and maintenance charges. For the Cairo bridge the carriers have to deduct upon a constructive mileage of 145 miles for the purpose of rate making. While the distance from Cairo to Paducah is only 45 miles, the

local rate on logs and lumber is 6 cents per 100 pounds, a rate that can only be justified by the extraordinary cost and upkeep of the Cairo bridge. In determining whether through routes and joint rates from the blanket territory to Paducah should be made through the Memphis gateway and joint rates established applicable to that crossing, the longer distance of the route via Thebes and Cairo to Paducah, and the cost and upkeep of this structure over the Ohio River, are facts to be considered.

2. *Rail routes from the blanket territory to Paducah.*—The appellants, together with the Illinois Central Railroad, have extensive lines and connections throughout the blanket territory west of the Mississippi River. All of them receive shipments of logs and lumber from this territory and bill them through, in carloads, to Cairo and to Paducah, making the through rate to Paducah the sum of the locals. The appellant, the St. Louis Southwestern Railway Company, commonly known as the "Cotton Belt," has a line west of the river to Thebes, about 30 miles north of Cairo on the Mississippi River. From Thebes this company operates to Cairo over trackage rights secured from the Chicago & Eastern Illinois Railroad and the Illinois Central. The St. Louis, Iron Mountain & Southern Railway, commonly known as the "Iron Mountain," has a line west of the Mississippi to Thebes and from Thebes to Cairo. The

Chicago, Rock Island & Pacific has a line from the blanket territory through Little Rock to Memphis, where it connects with the Illinois Central direct to Cairo, and by another line of the Illinois Central direct to Paducah. The Louisiana & Arkansas Railway extends southerly from Hope, Arkansas, on the Iron Mountain road, crossing the Cotton Belt at Stamps and the Rock Island at Winfield. These are shown in colors on the map.

3. *Rates*.—The rate on logs and lumber from the blanket to Cairo is 16 cents per 100 pounds and to Paducah the rate was 22 cents per 100 pounds. The Paducah rate via Cairo was made by taking the Cairo rate of 16 cents from the blanket and adding the local rate of 6 cents from Cairo to Paducah. The local rates from the blanket to Paducah via Memphis aggregated 22 cents per 100 pounds. This difference of 6 cents in favor of Cairo constituted the undue prejudice to Paducah complained of in this case.

4. *Prior cases before the Commission to which the appellants were parties.*

(A) *In Wisconsin & Arkansas Lumber Co. v. St. Louis, I. M. & S. Ry. Co. et al.*, 33 L. C. C. 32, decided January 12, 1915, the producers of lumber located in the northern part of the blanket territory complained that the blanket was too large and should be divided; that the rates from the northern portion through the Mississippi gateway should be lowered and the existing rates maintained from

the southern part of the territory. It was contended that the 16-cent rate was unreasonably high from the northern portion of the blanket to Cairo and that the blanket created an unlawful discrimination against producers in the northern portion. The rate of 16 cents per 100 pounds from the blanket territory to Cairo was established by the railroads in 1903, and the blanket has since been extended south, making a long haul from the southern portion. It was contended that the blanket should be divided on the Arkansas-Louisiana state line. The appellants were parties defendant in that case. After full hearing, the Commission found that, subject to certain reservations not affecting their reasonableness, "the rates and the blanket rate herein attacked are not unlawful," and the complaint was dismissed.

(B) The next case was *Rates on Lumber from Southern Points*, 34 I. C. C. 652, No. 520 on the Commission's I. & S. Docket, decided July 12, 1915. The appellants were defendants in that case. Tariffs had been filed by these carriers increasing the rates on logs and lumber from the southwest territory and raising the rate to 17 cents per 100 pounds from the blanket to Cairo. The tariffs were suspended and the reasonableness of the proposed increase was investigated. A large amount of testimony was taken and the case heard under the provision in section 15 of the Act to regulate commerce which provides that the Com-

mission may suspend any new schedule proposing an increase in rates—

and after full hearing * * * the Commission may make such order in reference to such rate, * * * *as would be proper in a proceeding initiated after the rate* * * * had become effective * * *.

[Italics ours.]

One of the issues in that case, therefore, was whether the proposed new rate of 17 cents from the blanket to Cairo was reasonable, and, if not, what would be a reasonable maximum rate. *Western Rate Advance Case*, 20 I. C. C. 307, 314. The Commission decided against the carriers, holding that the proposed increase to 17 cents was not justified, and that the rate from the blanket to Cairo should not exceed 16 cents per 100 pounds, which was found to be a reasonable maximum rate.

(C) In *Paducah Board of Trade v. Illinois Central R. Co. et al.*, 29 I. C. C. 583, 592, Commission's docket No. 5897, a case in which the appellants were parties, complaint was made that the rates on logs and lumber to Paducah from the entire southwestern territory were unreasonable and unjustly discriminatory, "as compared with the rates from the same producing territory to Cairo, Ill." Issues were joined, a full hearing was had, and the Commission's conclusions were as follows:

We find that defendants unduly discriminate against the dealers and manufacturers

of lumber at Paducah to the undue preference and advantage of those located at Cairo by the maintenance of the rates on lumber at present in effect from the producing points herein involved. It is our determination that the defendants who operate east of the Mississippi River should maintain rates to Paducah from substantially equidistant points or groups in Mississippi and Louisiana east of the river no higher than 1 cent below those contemporaneously maintained from the same points to Cairo. The defendants who operate west of the Mississippi River will be required to maintain rates to Paducah from substantially equidistant points or groups in Arkansas and Louisiana west of the river, on and south of the line of the Chicago, Rock Island & Pacific from Memphis to Little Rock [blanket territory] no higher than those contemporaneously maintained from the same points to Cairo.

No order was entered, but the Commission stated at the conclusion of its report, page 592:

Carriers will be expected by May 1, 1914, to revise their tariffs in accordance with the views expressed in this report. Pending such revision the case will be held open for such further proceedings and order as the Commission may deem necessary.

(D) *The case at bar.*—This case is in fact supplemental to No. 5897, last referred to. The evidence in that case was reintroduced and con-

sidered in this case and, for all practical purposes, the two may be considered as one case. The complaint was filed February 8, 1915. It alleged that the principal competitors of the lumber merchants and manufacturers at Paducah were located at Cairo; that the rates on logs and lumber, in carloads, to Paducah from the producing points in Louisiana and Arkansas south of the line of the Rock Island Railway, including Des Arc, Arkansas, were unreasonable and discriminatory, and gave to Cairo an unjust preference and advantage, to the undue prejudice of Paducah; that the route from said points of origin to Paducah via Thebes and Cairo was unduly long as compared with the route via Memphis to Paducah; and that the carriers had not revised their tariffs in accordance with the views expressed in the Commission's report in docket No. 5897. The complaint prayed that an order be entered requiring the appellants and other carriers to establish "through routes and joint rates for shipments of logs and lumber to Paducah, Ky., from points in the States of Louisiana and Arkansas on and south of the line" above described "and including Des Arc, Ark., via Memphis, Tenn., with joint rates via said route which shall not exceed the rates contemporaneously charged for the transportation of logs and lumber from the same points to Cairo, Ill." This case is No. 7736 on the Commission's docket, and is reported in 37 I. C. C. 719. In addition to the

evidence in No. 5897 which was introduced (Record, p. 96), a large amount of additional testimony was taken. On January 21, 1916, the Commission filed its report in writing, 37 I. C. C. 719 (Record, p. 17), in which it said, page 725:

We adhere to our former finding that the defendants unduly discriminate against Paducah to the undue preference and advantage of Cairo by the maintenance of their present rates on logs and lumber from the producing points here involved. We further find that the rates on logs and lumber to Paducah from points of origin in the territory involved are unreasonable to the extent that they exceed the present rates to Cairo. We further find that the defendants should establish through routes to Paducah from points or groups in Arkansas and Louisiana west of the Mississippi River, on and south of the line of the Chicago, Rock Island & Pacific Railway from Memphis to Little Rock, Ark., including Des Arc, Ark., and joint rates applicable via such through routes no higher than the rates at present maintained from the same points or groups to Cairo. These through routes and joint rates may be established via either Memphis or Cairo.

Referring to its report in case No. 5897, the Commission said, (37 I. C. C. 719, 721):

In the previous report we held that the distances to Paducah via Cairo are so much greater than the distances via Memphis that

“ the natural route from the points west of the Mississippi here involved is via Memphis rather than via Cairo.” Nothing appears in the present record to convince us that that finding should be modified. (Record, p. 19.)

On the same day the order in controversy was entered. By subsequent orders the effective date of the order was extended to June 1, 1916. (Record, p. 8.) A motion for rehearing was filed by the appellants and was overruled by the Commission. (Record, pp. 292, 293.)

5. *Proceedings in court.*—On March 14, 1916, the appellants filed their petition in the District Court of the United States for the Western District of Kentucky, praying that said order be wholly enjoined and set aside. (Record, p. 3.) The petition makes the report and order of the Commission a part thereof. (Record, pp. 5 and 8.)

The United States filed a motion to dismiss the petition (Record, p. 36), and on the same day the Interstate Commerce Commission, having intervened as respondent, filed a motion to dismiss, together with its sworn answer. (Record, p. 31.) The appellants filed, in support of their petition, a certified copy of the evidence considered by the Commission, and the case was heard upon this record.

The Illinois Central Railroad Company, a carrier serving both Cairo and Paducah, a defendant

in the proceedings before the Commission, is not a party to this suit. Presumably this carrier is satisfied with the order and intends to comply with it.

ARGUMENT.

I.

THE COMMISSION HAS POWER TO ESTABLISH THE THROUGH ROUTES AND JOINT RATES IN CONTROVERSY.

(1) Section 1 of the Act to regulate commerce provides that it shall be the duty of every carrier subject to the provisions of the Act—

to establish through routes and just and reasonable rates applicable thereto.

Section 12 of the Act provides:

* * * the Commission is hereby authorized and required to execute and enforce the provisions of this Act; * * *.

Section 15 of the Act confers upon the Commission power to establish through routes and joint rates. It provides that, after a full hearing, upon complaint or upon the Commission's own initiative, if—

the Commission shall be of opinion that any individual or joint rates or charges whatsoever demanded, charged, or collected by any common carrier or carriers subject to the provisions of this Act * * * are unjust or unreasonable or unjustly discriminatory, or unduly preferential or

prejudicial or otherwise in violation of any of the provisions of this Act, the Commission is hereby authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate or rates, charge or charges, to be thereafter observed in such case as the maximum to be charged, * * *.

And the carriers are required to observe such joint rates. It is further provided:

Whenever the carrier or carriers, in obedience to such order of the Commission or otherwise, in respect to joint rates, fares, or charges, shall fail to agree among themselves upon the apportionment or division thereof the Commission may, after hearing, make a supplemental order prescribing the just and reasonable proportion of such joint rate to be received by each carrier a party thereto, which order shall take effect as a part of the original order.

Section 15 also provides:

The Commission may also, after hearing, on a complaint or upon its own initiative without complaint, establish through routes * * * and may establish joint rates as the maximum to be charged and may prescribe the division of such rates as hereinbefore provided and the terms and conditions under which such through routes shall be operated, whenever the carriers themselves shall have refused or neglected to establish voluntarily such through routes * * * or joint rates; * * *.

Counsel for appellants in their brief, page 28, while conceding plenary power to Congress to regulate interstate commerce, contend that it can not "compel a carrier chartered by a State for the purpose of constructing and operating a railway wholly within that State to extend its rails by legislative fiat to the four corners of the earth which the compulsory establishment of through routes and joint rates necessarily does." This is the first time the constitutionality of this provision has been thus challenged in this Court.

In so far as appellants rely upon the fact that they are state corporations, the error of their position is determined in *Hale v. Henkel*, 201 U. S. 43, 75, where this Court said:

Being subject to this dual sovereignty, the General Government possesses the same right to see that its own laws are respected as the State would have with respect to the special franchises vested in it by the laws of the State. The powers of the General Government in this particular in the vindication of its own laws, *are the same as if the corporation had been created by an act of Congress.* [Italics ours.]

(2) As to the second point, discussed at length in the appellants' brief, that by compelling the appellants to establish through routes and joint rates, liabilities are devolved upon them against their will, in violation of the Fifth Amendment to the Constitution of the United States, we say, first,

that the question as to what liabilities are created by the compulsory establishment of through routes is not involved in this case. The question is whether Congress has power to require these carriers to establish through routes for the convenience of the public. Reference is made by counsel to the *Atlantic Coast Line Case*, 219 U. S. 186, 204, wherein this Court said:

This record presents no question as to the right of the initial carrier to refuse a shipment designated for a point beyond its own line, nor its right to refuse to make a through route or joint rate when such route and rate would involve the continuance of a transportation over independent lines. We, therefore, refrain from any consideration of the large question thus suggested.

The Court, in using this language, did not refer to the power of Congress to establish through routes, but to a refusal of the railroad to voluntarily establish such through routes and joint rates. The Court was dealing with the constitutionality of the Carmack amendment. The railroads had voluntarily established through routes, and the Court determined the validity of the Carmack amendment upon that state of facts. But there is nothing in that case which, by fair inference, can be held to question the power of Congress to compel the establishment of through routes and joint rates. The power of Congress is there defined by the Court as follows, page 201:

THE power to regulate is the right to prescribe the rules under which such commerce may be conducted. "It is," said Chief Justice Marshall, in *Gibbons v. Ogden*, 9 Wheat. 1, 197, a "power vested in Congress as absolutely as it would be in a single government having in its Constitution the same restrictions on the exercise of the power as are found in the Constitution of the United States." It is a power which extends to the regulation of the appliances and machinery and agencies by which such commerce is conducted. [Italics ours.]

Then follows a reference to cases illustrative of the lawful exercise of such power by Congress, and the opinion proceeds, pages 202-203:

Having the express power to make rules for the conduct of commerce among the States, the range of Congressional discretion as to the regulation best adapted to remedy a practice found inefficient or hurtful, is a wide one. If the regulating act be one directly applicable to such commerce, not obnoxious to any other provision of the Constitution, and reasonably adapted to the purpose by reason of legitimate relation between such commerce and the rule provided, the question of power is foreclosed.

Speaking of through routes and joint rates as a public convenience, the Court said, page 198:

Nothing has perhaps contributed more to the wealth and prosperity of the country than the almost universal practice of trans-

particular companies to cooperate in making through routes and joint rates. Through this method a situation has been brought about by which, though independently managed, connecting carriers become in effect one system. This practice has its origin in the mutual interests of such companies and in the necessities of an expanding commerce.

Establishing through routes and joint rates is a common practice among carriers; it is essential to the convenience of the public and to expedite the movement of commerce. In section 1 Congress exercised its plenary power to establish through routes and joint rates and by section 15 Congress gave the Commission power to establish through routes and joint rates in cases where they had either refused or neglected to establish these necessary conveniences to commerce. Instances of the exercise of the power to fix joint rates have been before this Court and, without question, their validity has been sustained. *Southern Railway Co. v. Pitt*, 206 U. S. 428; *Illinois Central v. Int. Com. Com.*, 206 U. S. 441; *Int. Com. Com. v. Northern Pacific Ry. Co.*, 216 U. S. 588; *United States v. Union Pacific R. Co.*, 226 U. S. 61; *Base Bros. Mercantile Co. v. Denver & N. W. R. Co.*, 233 U. S. 470; *Galveston, H. & S. A. Ry. Co. v. Wallace*, 223 U. S. 481, 491; *Norfolk & W. Ry. Co. v. Dixie Tobacco Co.*, 228 U. S. 593, 595; *O'Keefe v. United States*, 240 U. S. 294.

It was pointed out by Mr. Justice Lurton, who delivered the opinion of the Court in *Atlantic Coast Line R. Co. v. Riverside Mills*, 219 U. S. 186, 203, in upholding the Carmack amendment, that the liability imposed is no more repugnant to the Fifth Amendment to the Federal Constitution than is the regulation of appliances upheld by this Court in *Johnson v. Southern Pacific Co.*, 196 U. S. 1; or the control of equipment; *Int. Com. Com. v. Illinois Central R. Co.*, 215 U. S. 452; *Int. Com. Com. v. Chicago & A. R. Co.*, 215 U. S. 479; or regulating the relation of master and servant, so as to impose on the carrier engaged in interstate commerce liability for the negligence of a fellow servant; *Howard v. Illinois Central R. Co.*, 207 U. S. 463. So, also, the establishment of through routes and joint rates is no more repugnant to the Fifth Amendment to the Constitution than the regulations mentioned which impose restrictions and liabilities upon the carriers.

In *The Employers' Liability Cases*, 207 U. S. 463, Mr. Justice White, speaking for the Court, said, page 493:

* * * the test of power is not merely the matter regulated, but whether the regulation is directly one of interstate commerce, or is embraced within the grant conferred on Congress to use all lawful means necessary and appropriate to the execution of the power to regulate commerce.

The language of Mr. Justice Lurton, in *Atlantic Coast L. R. Co. v. Riverside Mills*, 219 U. S. 186,

at page 300, is equally applicable to the grant of power to establish through routes and joint rates. He said:

That a situation had come about which demanded regulation in the public interest was the judgment of Congress. The requirement that carriers who undertook to engage in interstate transportation, and as a part of that business held themselves out as receiving packages destined to places beyond their own terminal, should be required as a condition of continuing in that traffic to obligate themselves to carry to the point of destination, using the lines of connecting carriers as their own agencies, was not beyond the scope of the power of regulation. The rule is adapted to secure the rights of the shipper by securing unity of transportation with unity of responsibility. The regulation is one which also facilitates the remedy of one who sustains a loss by localizing the responsible carrier. Neither does the regulation impose an unreasonable burden upon the receiving carrier. [Italics ours.]

Counsel for the appellants also cite *St. Louis, I. M. & S. R. Co. et al. v. United States*, 217 Fed. 83, as authority for their proposition that "as none of appellants' rails reach Paducah, Ky., they can not be guilty of discriminating against that point." The district court said:

We believe that, as a matter of law, the charge of discrimination cannot be brought

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by a locality against any railroad that does not serve that locality, *either directly by its own route or by a joint arrangement with other railroads for a through route and a joint rate.*

The record in that case showed that the carrier did not reach Metropolis over its own rails or have any joint rate to Metropolis.

We respectfully submit that there can be no doubt that Congress has the power to empower the Commission to establish such through routes and joint rates upon a full hearing by the Commission.

II.

THE FACTS FOUND REQUIRED THE ESTABLISHMENT OF THROUGH ROUTES AND JOINT RATES TO PADUCAH.

Counsel for the appellants in their brief, page 42, contend "that no good ground has been shown for the establishment of through routes via Memphis; that to establish such through routes via the Iron Mountain and Cotton Belt would be to deprive these carriers of the long hauls guaranteed to them by Congress by section 15 of the Act to regulate commerce."

The Commission, in its report in No. 5897, 29 I. C. C. at page 592, said:

The rates to Paducah from points west of the river should not be lower than those to Cairo, because in hauling from west-side points to Paducah the Mississippi must be

crossed as well as in hauling to Cairo. *Under these requirements* the St. Louis, Iron Mountain & Southern and the St. Louis Southwestern *may haul lumber originating on their lines or their connections via Cairo, if they so desire.* The Chicago, Rock Island & Pacific will, of course, route its traffic as at present, via Memphis. [Italics ours.]

Not to change the existing movement of the traffic, the Commission said in its report, "These through routes and joint rates may be established via *either* Memphis or Cairo." At the 16-cent rate the traffic may continue to move by either route.

The order follows the report and requires the appellants (Record, p. 16)—

in so far as they participate in the traffic
 * * * to maintain through routes for the transportation of logs and lumber via Cairo, Ill., or Memphis, Tenn., to Paducah, Ky., from points or groups in Arkansas and Louisiana west of the Mississippi River * * * and to establish and maintain joint rates to Paducah, Ky., applicable via such through routes not in excess of the rates at present in effect from the same points or groups to Cairo, Ill. [Italics ours.]

In the present case the appellants, before this order was entered, published combination rates to Paducah, Kentucky. *Paducah Board of Trade v.*

Illinois Central R. Co. et al., 29 I. C. C. at page 590. The published logs and lumber combination rate from the blanket territory to Paducah was 22 cents, and the appellants billed logs and lumber from the blanket territory direct to Paducah via Thebes over their own lines and the Illinois Central at the rate named. In *Galveston H. & S. A. Ry. Co. v. Wallace*, 223 U. S. 481, 491, this Court said:

Under the Carmack amendment, as already construed in the *Riverside Mills Case*, wherever the carrier voluntarily accepts goods for shipment to a point on another line in another State, it is conclusively treated as having made a through contract. It thereby elected to treat the connecting carriers as its agents, for all purposes of transportation and delivery.

Upon this traffic the liability of the appellants under the Carmack amendment existed before the order in question was entered. The order requiring the through routes and joint rate on logs and lumber did not enlarge the existing liability, nor did it require the appellants to select any new agencies.

Congress had power to authorize the Commission to consider the reasonableness of an existing through rate and, if the Commission found the rate unreasonable, to reduce it. *Minneapolis & St. Louis R. Co. v. Minnesota*, 186 U. S. 257. When the Commission establishes such through

routes and joint rates in accordance with the provisions of the Act, its order is valid. *Int. Com. Com. v. Northern Pacific Ry. Co.*, 216 U. S. 538.

This Court said, in the *Riverside Mills Case*, pages 202-203:

Having express power to make rules for the conduct of commerce among the States, the range of Congressional discretion as to the regulation best adapted to remedy a practice found inefficient or hurtful, is a wide one.

This power of regulation covers every common practice of carriers affecting the convenience and welfare of the public. Through routes and joint rates may be essential to such convenience and welfare. The grant of power to establish through routes is therefore within the power granted to Congress by the Constitution.

This constitutional question was not raised in this case before the Commission nor in the district court, but was raised by appellants in a subsequent case involving the same rate, applied to lumber commodities. The decision of the Commission on this point will be found in *Paducah Board of Trade et al. v. Illinois Central R. Co. et al.*, 43 I. C. C. 537, 540. The conclusion of the Commission is stated in *Black & White River Transportation Co. v. Missouri Pacific Ry. Co.*, 37 I. C. C. 244, 246.

It will be observed, therefore, that the effect of the order is to reduce the through rate from

an aggregate or combination rate of 22 cents to a maximum joint rate of 16 cents. The movement of the traffic is not affected by this change. The routes continue as they were through either gateway; the carriers are to establish these through routes by either gateway, "in so far as they participate in the traffic," and apply thereto the lower rate prescribed by the order. Appellants not participating in the traffic via the Memphis gateway, are not now required to join in through routes and joint rates over that line. They may maintain through routes via Cairo and thus preserve the haul. The establishment of the through routes as required by the order and the reduction of the through rate will not divert any traffic from either line or shorten the haul of any carrier. The rate to Paducah being the same over both routes, the routing of the traffic can not be affected by the reduction of the rate. The order therefore does not short-haul the appellants' carriage of this traffic. The amount of the traffic which they secured under the old rate by competition with the lines on the eastern side will still be secured by them by like competition at the new rate.

From what we have said it is clear that there was power to establish the through routes and joint rates to Paducah in order to reduce the existing unreasonable through rate and to prevent the undue and unreasonable preference in favor of Cairo in this traffic.

III.

THE COMMISSION FOUND THAT THE PADUCAH
THROUGH RATE WAS UNREASONABLE.

The complaint before the Commission filed by the Paducah Board of Trade alleged that the rates—

on logs and lumber, in carloads, to Paducah from producing points in Louisiana and Arkansas on and south of the Chicago, Rock Island & Pacific Railway from Memphis, Tenn., to Little Rock, Ark., and including Des Arc, Ark., *are unjust and unreasonable* * * *. (Record, pp. 29 and 30.) [Italics ours.]

The appellants joined issue upon this allegation and evidence was submitted to the Commission, consisting of the evidence taken in the former case, No. 5897, reintroduced in this case, and testimony, with many exhibits and references to tariffs on file with the Commission. Upon this evidence, to which we shall refer under a subsequent heading, the Commission expressly said in its report, 37 I. C. C. 719, 725:

We further find that the rates on logs and lumber to Paducah from points of origin in the territory involved are unreasonable to the extent that they exceed the present rates to Cairo. (Record, p. 23.) [Italics ours.]

In the first paragraph of the order, where the defendants are required to cease and desist from

publishing and collecting "their present rates for the transportation of logs and lumber to Paducah, Ky., from points or groups in Arkansas and Louisiana west of the Mississippi," etc., it is declared, "*which rates have been found in and by said report of the Commission to be unreasonable, * * **"

These findings apply to the rate *per se*, and lay the foundation for the establishment of a lower rate for this traffic to Paducah. The finding comes within the requirements laid down by this Court in the decisions cited in appellants' brief. The fact that there were two issues to be determined in the case, namely, the unreasonableness of the existing rate and the effect of different rates to Paducah and Cairo, and that much discussion was given to the question of discrimination, does not lessen in the slightest the express finding of the Commission that the Paducah through rate was unreasonable.

The findings and the form of the order in this case were made in view of the conclusions of the Commission in the former cases referred to. The decisions in those cases, as we have noted, (1) continued the blanket voluntarily established by the railroads; (2) fixed a maximum reasonable rate from the blanket to Cairo; (3) found that the discrimination of 6 cents per 100 pounds between Cairo and Paducah created an undue and unreasonable preference in favor of Cairo; and

(4) considering the shorter distance via the Memphis gateway to Paducah, the circumstances of the route via Thebes and Cairo, and the competition in trade between the two cities, the Commission held that the rate from the blanket to Paducah should not exceed the rate to Cairo. This was a finding that the Paducah rate was unreasonable *per se* to the extent that it exceeded the rate to Cairo, and the order requires the establishment and maintenance of a joint rate to Paducah "not in excess of the rates at present in effect from the same points or groups to Cairo, Ill." The findings in all these cases are in harmony and support the order.

IV.

THE COMMISSION DID NOT IGNORE THE COMPETITIVE CONDITIONS EXISTING AT CAIRO.

Water competition exists at both cities. At Cairo it is entirely over the Mississippi, while at Paducah, 42 miles beyond, it exists over the Mississippi and Ohio rivers. Both cities may be reached by water with the same boats, the difference in mileage not being a very important factor over a water route. It appears from the cases referred to that the Cairo rate began at 12 cents per 100 pounds and has been advanced by the railroads at various times to 13, 14, and, in 1903, to 16 cents per 100 pounds. In 1915 the carriers filed the tariffs

proposing to advance the rate to 17 cents, which were suspended by the Commission and the advance was not permitted, the Commission holding the 16 cents was a reasonable maximum rate. From this it would appear that water competition has not been a serious deterrent to advances in this rate. The advance was stopped by the Commission, after investigation, finding that 16 cents was a reasonable maximum rate for the service. In the report in case No. 5897, attention is called to the fact that the 16-cent rate still gives Cairo, which is on the north bank of the Ohio, an advantage over Paducah of about 1 cent per 100 pounds on outbound shipments to the northeast, Paducah being on the south bank of the Ohio River and obliged to send its products across the Ohio in order to reach the same consuming territory. *Paducah Board of Trade v. Illinois Central R. Co.*, 29 I. C. C. at page 588.

Cases before the Commission are cited in the brief for appellants which had to do with conditions quite different from those in the case at bar, wherein the effects of water competition are discussed. These cases have no direct bearing upon the findings and validity of the order in question, for the reason that they apply to entirely different conditions.

In the several cases which have been before the Commission regarding the log and lumber rates from the southwest territory through Cairo, Padu-

cah, and other river points, the relative position and advantages of these cities and their competition in business have been considered and no facts or features of the traffic have been left untouched by the contesting parties. All have received due consideration from the Commission. See cases cited under the last division of this brief.

V.

UNDER THE TERMS OF THIS ORDER IT WAS NOT NECESSARY FOR THE COMMISSION TO FIND THAT THE ROUTE THROUGH CAIRO WAS UNREASONABLY LONG AS COMPARED WITH THE ROUTE THROUGH MEMPHIS.

Counsel contend that there was no evidence before the Commission regarding the constructive mileage claimed for the Cairo bridge, and that it was not an element to be considered in determining whether the route via Thebes and Cairo was unreasonably long; and that the Commission could not order the establishment of a through route via Memphis in the absence of a specific finding that the route through Cairo was unreasonably long as compared with the route through Memphis.

The limitation upon the power of the Commission in section 15 to establish through routes relates to cases where a carrier may be required to short-haul itself. If a route is proposed which requires a carrier to embrace within it substantially less than the entire length of its railroad between the termini of such proposed route, the Commission

must then find that the existing route is unreasonably long as compared with another practicable through route. As we have already shown, the appellants are not required to short-haul themselves. They are required to establish a through route to Paducah, *in so far as they participate in the traffic, by either Cairo or Memphis.* As these appellants do not participate in the traffic which moves through the Memphis gateway, they are only required to establish a through route and joint rate through the Thebes gateway, the rate not to exceed 16 cents. The appellants are not required to short-haul themselves, and therefore no "specific finding that the routes through Cairo are unreasonably long as compared with the routes through Memphis" is required by the statute.

In determining the desirability of a through route via the Memphis gateway, all the circumstances and conditions *which affect the rate* by either route may be considered. It was therefore proper for the Commission in considering the route through the Thebes gateway to consider the Cairo bridge. The Commission in its report in No. 5897, 29 I. C. C. at page 591, after finding that the route through Memphis was the natural route and shorter by approximately 40 to 60 miles than the route through Cairo, said:

Not only that, but the haul to Paducah via Cairo necessitates crossing both the Mississippi and the Ohio rivers, the former at

Thebes, Ill., and the latter at Cairo, while the haul to Paducah via Memphis does not necessitate crossing the Ohio. It has been frequently maintained by the carriers that the bridge across the Ohio River at Cairo should be considered constructive mileage, and 112 miles has been given as a correct equivalent * * * A carrier can not reserve to itself the long haul if to do so works unduly to the detriment of the shippers.

In the report filed in No. 7736, the case in which the order in controversy was entered, the Commission (Record, pp. 19, 20) said, 37 I. C. C. 719, 721, 722:

In the previous report we held that the distances to Paducah via Cairo are so much greater than the distances via Memphis that "the natural route from the points west of the Mississippi here involved is via Memphis rather than via Cairo." Nothing appears in the present record to convince us that that finding should be modified. * * * In computing these distances via Thebes, however, no allowance was made for the constructive mileage of the Cairo bridge. In our previous report we observed that in reaching Paducah via Thebes it is necessary to cross both the Mississippi River and the Ohio River, while only the former must be crossed if the Memphis route is used. In a number of recent cases the carriers have maintained that the bridges spanning these rivers, and especially the one at Cairo, are

expensive, and that the cost of their construction and maintenance should be reflected in the rates. It is clear, at any rate, that in determining the relative reasonableness or practicability of two routes the operating conditions are entitled to consideration.

The soundness of this proposition can not be questioned. The record shows the existence and the cost of this bridge. This element is important for, when considered by itself, it affects the rates, or, as it is stated, is "reflected in the rates." Where the carrier is not required to short-haul itself by the establishment of a new through route the consideration of such a fact is entirely justified.

But counsel insist in their brief, page 89, point IX, that the Fifth Amendment to the Constitution has been violated by the Commission in fixing the rate for the through route to be established by the appellants "to meet the short-line mileage" of the Rock Island Railway and thereby deprive "the Iron Mountain and Cotton Belt of revenue for service for the additional haul over their rails." Disregarding the inconsistency of this claim with their previous statement that the route via Memphis is not shorter, we again call the attention of the Court to the two issues involved in this case and which had to be determined, namely, that the through rate to Paducah was unreasonable, and that a difference in the rates to Cairo and Paducah created

an undue and unreasonable preference in favor of Cairo. The maximum reasonable rate to Cairo having been determined in a former case to which the appellants were parties, and the natural route from the blanket territory to Paducah being through the Memphis gateway, this route in fact being shorter, the Commission could not do otherwise than find that the existing Cairo rate was a proper one to be applied to Paducah. Taking into consideration the practicability of the two routes and all the circumstances attending the operation and maintenance of the lines, it is clear that a reasonable maximum rate to one city by the direct route would be a reasonable maximum rate to the other by the natural and shorter route. There is no claim that the rate is confiscatory in fact and there is no evidence in the record tending to show that it is an unreasonable rate. In a contested case to which the appellants were parties, the reasonableness of the rate to Cairo was established, and the Commission refused to allow the carriers to increase it.

The claim, therefore, that the constitutional rights of the appellants have been invaded by fixing the joint rate to "meet the short-line mileage" to Paducah is without foundation.

In this connection, we call the attention of the Court to the fact that in disposing of the undue discrimination found to exist against Paducah and in favor of Cairo, the ordinary form of order

requiring the carriers to take out the discrimination, leaving it to the carrier to either depress the higher rate or increase the lower, or in part to do both, could not be entered in this case. In the former case referred to, the Commission had refused to allow the appellants to increase the Cairo rate from 16 to 17 cents. To make the ordinary form of order in a discrimination case would have annulled the action by the Commission in that case, and permitted the carriers to put in an unreasonably high rate for both cities. The form of the order, therefore, meets the situation by providing that the joint rate to Paducah, applicable to the through routes, shall not be "in excess of the rate at present in effect from the same points or groups to Cairo, Ill."

VI.

THE ORDER CLEARLY DESIGNATES THE CARRIERS WHO ARE TO ESTABLISH AND MAINTAIN THE THROUGH ROUTES AND JOINT RATES.

Counsel, in paragraph XI of their brief, contend:

that the Commission has not designated the connecting line to the through routes established by it; * * * that the Commission is without authority to order through routes via all lines operating between Memphis and Paducah.

The order does not direct the establishment of through routes "between Memphis and Paducah,"

but between points in the blanket territory and Paducah, by either Memphis or Cairo. All carriers affected were parties to the proceeding before the Commission. The order specifies the through routes to be established between the named points, either "via Cairo, Ill., or Memphis, Tenn.," and the joint rate required must be applicable to such routes when so established by one or the other, or both, of said gateways, at their election. The carriers affected are parties and are named in the title to the order. It is then sufficient to say:

That the above-named defendants, *in so far as they participate in the traffic*, be, and they are hereby, notified and required, etc.

Appellants were defendants in this proceeding and order; they are named in the caption, and it was unnecessary to name them again in the body of the order.

VII.

THERE IS SUBSTANTIAL EVIDENCE IN THE RECORD TO
SUPPORT THE CONCLUSIONS AND ORDER OF THE
COMMISSION.

In suits to enjoin orders of the Commission, the Court will not undertake to substitute its judgment for that of the Commission, nor will it undertake to weigh the evidence or determine disputed facts; nor will the Court undertake to determine administrative questions or the wisdom or expediency of

the orders. The Court will only review the record for the purpose of determining whether there was substantial evidence in support of the conclusions and the order in question. *Procter & Gamble v. United States*, 225 U. S. 282, 297; *Int. Com. Com. v. Union Pacific R. Co.*, 222 U. S. 541, 547; *Atchison, T. & S. F. Ry. Co. v. United States*, 232 U. S. 199, 221; *Mitchell Coal Co. v. Pennsylvania R. Co.*, 230 U. S. 247, 257, 258; *United States v. Louisville & N. R. Co.*, 235 U. S., 314, 320.

Where the reasonableness of a rate is involved, there are many elements to be considered in fixing a rate, and the findings of the Commission, where such elements appear, are conclusive. The facts which constitute substantial evidence were referred to and defined by this Court in *Int. Com. Com. v. Union Pacific R. Co.*, 222 U. S. 541, 549, 550; *Int. Com. Com. v. Louisville & N. R. Co.*, 227 U. S. 88, 96; *O'Keefe v. United States*, 240 U. S. 294, 302-303.

With these guides, we call attention to the evidence bearing upon the essential conclusions in the Commission's report.

(A) *Discrimination and unreasonableness of existing rates to Paducah.*—In the record, docket No. 5897, (Record, pp. 215, 216) Mr. Craig, secretary of the Paducah Board of Trade, testified in substance that there were no persons handling lumber at Paducah who shipped it in from the south and out to the north, because the combination of

rates to Paducah was such that it was impossible to move lumber in and out in competition with Cairo; that several persons and lumber interests contemplating the handling of lumber at Paducah, after looking into the rate adjustment at that point, had located elsewhere, as they were unable to do business at Paducah; that Ortman, Nichols & Cox had looked over the situation and had located at Metropolis; that the Leigh Banana Case Co. plant, doing half of its business in Paducah, had been forced to move to Cairo, as they got their raw material from Des Arc, Arkansas; that the Cairo combination to Paducah made it impossible to operate in Paducah; that the A. B. Smith Lumber Co. expected to move their yards from Paducah in a very short time; that they handled telephone poles; that he did not know any reason for it other than the rate adjustment why Paducah should not be as good a lumber market as Cairo; that it should be better, considering its geographic location, as they had no floods as compared with Cairo; that Cairo is a levee town, and that levees have frequently broken through, flooding the manufacturing district.

At Record, pp. 217-218, Mr. Smith, a wholesale lumber dealer, residing at Paducah, said that on account of the freight rates they did not rehandle lumber at Paducah, but that they did at points north of the Ohio River, such as Brockport, Metropolis, Joppa, and Cairo; that he was awaiting

the outcome of this decision before opening a yard for business north of the river; that the advantage to points north of the river over Paducah was 2 cents per 100 pounds. Paducah was not a re-handling market on account of the difference in freight rates.

At Record, pp. 226-227, C. L. Faust, of Paducah, testified that he had a lumber yard at Cairo and also one at Brockport; that he did no business in Paducah on account of the freight rates; that he could not bring lumber in to Paducah and compete with other markets; but that he would prefer to do business at Paducah if he could do so; and that in doing business at Paducah there would be a loss of about 50 per cent of their net profits on account of the rates.

At Record, pp. 239-240, Mr. Leigh, of the Leigh Banana Case Co., testified that they had located a plant at Cairo because of the discrepancies in freight rates from Des Arc, Arkansas, where they obtained their lumber.

At Record, pp. 242-243, Mr. Paxton stated that the difference in freight rates between Cairo and Paducah made a difference of \$10 to \$13 a car in favor of Cairo, and that he handled about 400 cars a year.

Mr. Craig again testified in the second hearing (Record, pp. 96, 97), docket No. 7736, giving substantially the same testimony as in the former hearing.

At Record, pp. 108-109, Mr. Sherrill stated that the freight rate from Brookhaven, Mississippi, a point east of the river, was 16 cents to Paducah and 14 cents to Cairo; and that from Winfield, Louisiana, a point west of the river, the rate to Paducah was 18 cents, to Cairo 16 cents. He also stated the difference in rates from other points.

On Record, pp. 122-123, Mr. Leigh again testified that he had moved his plant from Paducah to Cairo on account of freight rates; that the rates from Des Arc, Arkansas, were 18 or 19 cents to Paducah and 11 cents to Cairo, a difference of 6 cents against Paducah.

At Record, p. 139, Mr. Craig testified that Paducah had higher ground and was more satisfactorily located for a factory than Cairo, but that with a 6-cent rate against him it was impossible to maintain his industry in Paducah.

Many exhibits were filed at the last hearing, showing the location of transportation lines, comparative distances, rates, and other facts bearing upon the relation of these two cities and the advantages and disadvantages to lumber dealers occasioned by the differences in freight rates. These distances show that Paducah is more favorably located with reference to the producing territory than is Cairo, and has a large consuming territory which it can supply with lumber if it is put upon a fair equality in freight rates with Cairo. The business of rehandling lumber and manufac-

turing can be carried on equally as well at Paducah as at Cairo for the purpose of supplying the markets which are naturally tributary to Paducah.

Certainly there is substantial evidence to support the findings of the Commission that the Paducah rates were unreasonable and that there was undue preference and advantage in favor of Cairo over Paducah.

(B) *The finding that 16 cents per 100 pounds is a reasonable rate to Paducah.*—In *Louisville & N. R. Co. v. Siler et al.*, 186 Fed. 176, 184, Circuit Judge Warrington and District Judges Sanford and Denison sitting, the court said:

It is hardly conceivable in a contested case that the mind could be prepared to resolve the question of "extortion" or "extortionate rate," without obtaining and considering facts tending to show what would be a fair compensation for the service in issue; and those very facts would inevitably establish a standard for at once fixing a reasonable rate to be charged for the service and testing the character of the existing rate.

Having found that undue prejudice existed and that the two cities, Paducah and Cairo, should be put upon an equality as to rates on lumber and logs from the territories named, and having in mind the fact that in another proceeding to which these carriers were parties, I. & S. Docket No. 520, *Rates*

on *Lumber from Southern Points to the Ohio River Crossings and other Points*, 34 I. C. C. 652, the Commission had refused to allow the Cairo rate to be raised above 16 cents (decided July 12, 1915). The question presented was whether 16 cents would be a reasonable rate from equidistant points to Paducah. The mileage from many different points to Paducah via Memphis and Cairo and to Cairo was given for comparison, a table of which is in the report. The conditions of the routes and what would be the natural flow of the traffic, if unaffected by difference in freight rates, was before the Commission in the case. The lumber and manufacturing business and the consuming points tributary to these cities was shown by maps offered as exhibits. The general advantages and disadvantages of the cities were pointed out by the witnesses. See testimony referred to on pages 39-41. The exhibits of mileage, etc., attached to the record of the second hearing, and population of the cities are given. (Second record, p. 11.)

At Record, p. 134, Mr. Carter testified that from equidistant points south of the Ohio River on the Illinois Central the rate on logs and rough material was based on mileage, and that an arbitrary of 2 cents was charged to Cairo on account of the Cairo bridge, so that Paducah, from an equal distance, enjoyed a rate of 2 cents less than Cairo on logs, 2 cents being the bridge arbitrary.

At Record, p. 126, the rate structure was presented by Mr. Musick, showing a rate to Paducah

via the Illinois Central of 14 cents; via the Mobile & Ohio of 14 cents; via the Rock Island of 22 cents; via the St. Louis Southwestern of 22 cents; and via the Iron Mountain of 22 cents. The rates to Cairo were: Illinois Central, 14 cents; Rock Island, 16 cents; Mobile & Ohio, 14 cents; St. Louis Southwestern and Iron Mountain, 16 cents. The 16-cent rate to Cairo, voluntarily put in and maintained for 12 years, was a proper item of evidence of reasonableness to be considered. *Southern Pacific Co. v. Int. Com. Com.*, 219 U. S. 433, 444; *Louisville & N. R. Co. v. Finn et al.*, 235 U. S. 601. The rates to other points were also given.

This evidence and more that might be cited shows that the Commission had before it statistics covering rates on lumber and logs charged by the different roads from producing territory to the two cities under consideration and also the rates from these two cities to consuming territory. It was this class of testimony to which Mr. Justice Lamar referred to when he said, in *Int. Com. Com. v. Union Pacific R. Co.*, 222 U. S. 541, 550:

With that sort of evidence before them, rate experts of acknowledged ability and fairness, and each acting independently of the other, may not have reached identically the same conclusion. * * * Still there was in this mass of facts that out of which experts could have named a rate. The law makes the Commission's finding on such facts conclusive.

(C) *The evidence already cited bears directly upon the question of through routes and joint rates.*—It was clearly shown that the traffic under consideration passes over two or more lines of railroad, with two exceptions, to Cairo; those exceptions are the Iron Mountain and the Illinois Central. The Illinois Central also serves Paducah over its own lines, as does the Nashville, Chattanooga & St. Louis Railway. The traffic originating on other lines passes over the lines of two or more carriers. In order to secure, therefore, the free flow of this traffic to Paducah from the territory named, it is essential that through routes and joint rates be established. And, supporting the order, the location and relation of these two cities, set forth in the evidence specifically referred to, the mileage, the relation of the cities to the producing territory and to consuming territory, the identity of the business of rehandling and manufacturing lumber for the market, are all substantial and persuasive facts upon which the Commission acted.

We do not undertake to weigh this evidence or balance it against the testimony offered by the carriers, for the reason clearly set forth in the authorities cited. The only inquiry is whether there was substantial evidence upon each of these issues to support the conclusions and the order of the Commission. We submit that the testimony referred to, tested by the opinions of this Court, is substan-

tial evidence in support of the Commission's findings and order.

VIII.

POWER OF THE COMMISSION TO FIX DIVISIONS.

Counsel for the appellants in their concluding point, XIII, claim that the rate is confiscatory because, after deducting from the lower rate the divisions which they have been paying out of the higher rate, there will not be sufficient left to compensate the appellants for their service. This theory is based upon an assumption that the divisions of the lower rate to their connecting carriers will be the same in amount as the divisions, under the higher rate. Of course this can not be so, and if the connecting carriers insist upon such riers will be the same in amount as the divisions section 15 of the Act, already quoted in this brief, provides a complete remedy. If the carriers "fail to agree among themselves upon the apportionment or division of the new rate," the Commission is authorized, after hearing, to "make a supplemental order prescribing the just and reasonable proportion of such joint rate to be received by each carrier party thereto." This disposes of the claim that the connecting carriers can compel the payment to them of unreasonable divisions and thereby deprive the appellants of their fair share of the rate for services rendered by them.

CONCLUSION.

This case is one of a series of cases fixing and adjusting rates and charges on lumber at the Ohio River crossings. *Norman Lumber Co. et al. v. Louisville & N. R. Co. et al.*, 22 I. C. C. 239, 29 I. C. C. 565; *Manufacturers and Merchants Association of New Albany, Ind., et al. v. Aberdeen & Asheboro R. Co. et al.*, 24 I. C. C. 331; *Paducah Board of Trade v. Illinois Central R. Co. et al.*, 29 I. C. C. 583; *Metropolis Commercial Club v. Illinois Central R. Co. et al.*, 30 I. C. C. 40; *Paducah Board of Trade v. Chicago, B. & Q. R. Co. et al.*, 37 I. C. C. 743; and *Paducah Board of Trade v. Abilene & S. R. Co. et al.*, 37 I. C. C. 760.

These cases were all contested, and a large amount of evidence was taken with respect to traffic conditions, commercial competition, and rates at the various crossings. The Commission in its determination has applied certain general principles so as to provide a harmonious and lawful structure of rates throughout the territory involved. The lumber traffic, from the beginning, has been more or less interrupted at the river crossings, and the business of rehandling and re-shipping has grown up at these gateways. The aim of the Commission has been to give reasonable rates upon this traffic to and from the river and to protect the commercial and business interests of these cities against undue prejudice or preference.

The Commission by the order in the case at bar has completed an adjustment which it considers fair to all. No other carrier is complaining. The appellants have selfish interests to serve in maintaining monopolistic conditions at Cairo; their contentions are technical and artificial, and should not be sustained.

We respectfully submit that the Commission, in its report, stated its conclusions upon all the essential issues before it; that there was substantial evidence in the record in support of the conclusions and the order; and therefore the decree of the district court should be affirmed.

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Commerce Commission.*



ST. LOUIS SOUTHWESTERN RAILWAY COMPANY ET AL. *v.* UNITED STATES AND INTERSTATE COMMERCE COMMISSION.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF KENTUCKY.

No. 199. Argued October 12, 15, 1917.—Decided November 12, 1917.

Meanings and relations of the terms "through route," "through rate," "joint rate," "sum of the locals," "division of joint rate," "rate-breaking point" and "combination rate" explained and defined.

Railroad companies, which, though chartered by different States, are all operating interstate railroads and otherwise engaged in interstate commerce, and which have established a through route between interstate points with a through rate consisting of the sum of the local rates, or of a combination of a local rate with a joint rate to an intermediate point, are not deprived of their rights under the Fifth Amendment when required, by an order of the Interstate Commerce Commission, to substitute a joint through rate (of reasonable amount) for the through rate thus existing, and to maintain the same through route or, at their election, substitute a modification of it which the Commission has found preferable.

Such an order is within the power conferred upon the Commission by the Act to Regulate Commerce, as amended.

The Commission's order, establishing through routes and a joint rate on logs and lumber from the "blanket territory" of Arkansas to Paducah, Kentucky, which permitted complaining carriers to maintain their route via Cairo, Illinois, or to substitute a route via Memphis, Tennessee, which the Commission found to be the more natural one, the joint rate fixed by the Commission to be the same in either case, is consistent with that provision of § 15 of the Act to Regulate Commerce, forbidding the Commission to embrace in a through route "less than the entire length" of a railroad "unless to do so would make such through route unreasonably long."

The power of Congress and of the Commission to prevent interstate carriers from discriminating against a particular locality applies to carriers the lines of which do not reach the locality but which bill through traffic to it over connecting lines.

An order of the Commission requiring carriers to reduce existing through rates by establishing joint rates, or, in the alternative, new through routes with joint rates, rests on § 15 of the Act to Regulate Commerce. It is not to be regarded as primarily an order to remove discrimination in violation of § 3, even though discrimination in rates as between two localities may have furnished the occasion for the complaint upon which the Commission acted and may have afforded reason for the rate fixed by its order.

234 Fed. Rep. 668, affirmed.

THE case is stated in the opinion.

Mr. Henry G. Herbel, with whom *Mr. Daniel Upthegrove*, *Mr. John R. Turney*, *Mr. Fred G. Wright*, *Mr. W. F. Dickinson*, *Mr. W. T. Hughes* and *Mr. Henry Moore* were on the briefs, for appellants.

Mr. Assistant Attorney General Frierson, with whom *Mr. Alex Koplin* was on the briefs, for the United States.

Mr. Charles W. Needham, with whom *Mr. Joseph W. Folk* was on the brief, for the Interstate Commerce Commission.

MR. JUSTICE BRANDEIS delivered the opinion of the court.

This suit was brought in the District Court of the United States for the Western District of Kentucky by three railroad companies¹ against the United States and the Interstate Commerce Commission. Plaintiffs seek to enjoin the enforcement of and to set aside an order entered by the Commission on January 21, 1916, directing these and other carriers to establish certain through routes and joint rates on logs and lumber to

¹ A fourth carrier, the Louisiana & Arkansas Railway Company, was permitted to intervene as party plaintiff and joined in the appeal; but the special facts concerning it are not of importance.

Paducah, Kentucky, and reducing existing rates. An application was made for a temporary injunction. Both defendants moved to dismiss the bill. The Commission also answered. The case was fully heard upon the evidence before three judges "as upon final submission upon the merits"; a decree was entered dismissing the bill without costs (234 Fed. Rep. 668); and the case comes to this court by direct appeal.

Paducah is situated on the south bank of the Ohio River, 42 miles above Cairo, Illinois, which lies on the north bank of the Ohio near its confluence with the Mississippi. An important business in each city is manufacturing and jobbing lumber. They compete in both the buying and the selling markets. Each draws its supplies of logs and lumber, in part, from the extensive region lying west of the Mississippi and south of the Arkansas River, known in the trade as the "blanket territory."¹ The distances from this region to Paducah are not greater than to Cairo; but, prior to the order of the Interstate Commerce Commission herein complained of, the through freight rate on logs and lumber was 22 cents per hundred pounds to Paducah while it was only 16 cents to Cairo.

The principal railroads serving the "blanket territory" are the St. Louis and Southwestern, the St. Louis, Iron Mountain and Southern, and the Chicago, Rock Island and Pacific. The first two have their own lines from the "blanket territory" to Cairo; but can reach Paducah only over a connecting line. The Rock Island reaches both Cairo and Paducah only over a connecting line. The most direct route to Paducah from the lines of each

¹This region is called "blanket territory," because a "blanket" rate on logs and lumber is made from all shipping points within the territory to points beyond. That is, the rate is the same regardless of the distance hauled *within* the territory, which extends about 400 miles from north to south and 300 from east to west.

of the three complainants is via Memphis, Tennessee; but prior to the order of the Interstate Commerce Commission herein complained of only the Rock Island had established its through route via Memphis. The other two companies had through routes to Paducah via Cairo. These, which had been in operation for many years, are materially longer than possible routes via Memphis; and also necessitate crossing the Ohio as well as the Mississippi. Both the Cairo and the Memphis routes to Paducah involve using as connecting carrier the Illinois Central, which has a line extending from Memphis through Paducah to Cairo.¹ The 22-cent rate from the "blanket territory" to Paducah via Cairo is made by adding to the "joint rate" or "local" of 16 cents to Cairo, the local rate of 6 cents from Cairo to Paducah, Cairo being a "rate-breaking" point.² The connection of the Rock

¹ The distance on the Illinois Central from Memphis to Paducah is about 169 miles. The Nashville, Chattanooga and St. Louis Railroad also has a line from Memphis to Paducah, but it is much longer.

² A "through route" is an arrangement, express or implied, between connecting railroads for the continuous carriage of goods from the originating point on the line of one carrier to destination on the line of another. Through carriage implies a "through rate." This "through rate" is not necessarily a "joint rate." It may be merely an aggregation of separate rates fixed independently by the several carriers forming the "through route"; as where the "through rate" is "the sum of the locals" on the several connecting lines or is the sum of lower rates otherwise separately established by them for through transportation. *Through Routes and Through Rates*, 12 I. C. C. 163, 166. Ordinarily "through rates" lower than "the sum of the locals" are "joint rates." Prior to the amendment of the Act to Regulate Commerce (1906, c. 3591, § 4, 34 Stat. 584, 590) authorizing the Commission to establish through routes and joint rates, all "joint rates" were (as most still are) the result of agreements between carriers, which fix also the "divisions"; that is, the share of the "joint rate" to be received by each. *New York, New Haven & Hartford R. R. Co. v. Platt*, 7 I. C. C. 323, 329. The bases of such divisions differ greatly in practice. Sometimes all the carriers participate in the joint rate in the proportions which their local rates bear to the sum of the locals;

Island with the Illinois Central at Memphis is made under similar conditions.

On February 8, 1915, the Paducah Board of Trade filed with the Interstate Commerce Commission a complaint charging (1) that the 22-cent rate to Paducah was unjust and unreasonable; (2) that it was discriminatory and gave an undue preference and advantage to Cairo; and (3) that the route from the "blanket territory" via Cairo was unduly long as compared with the route via Memphis. The complainant asked that through routes be established via Memphis "with joint rates . . . which shall not exceed the rates contemporaneously charged for the transportation of logs and lumber from the same points to Cairo."

Fifty-three railroads, which participate in this traffic, including those named above, were joined as respondents. Hearings were duly had; much evidence was introduced;

in other words, the percentage of reduction from the local rate is the same for each. Sometimes one carrier is allowed the full local, while the rate of another is seriously reduced. The share of each being a matter of bargain, it may be fixed at an arbitrary amount. *Chamber of Commerce of Milwaukee v. Flint & Pere Marquette R. R. Co.*, 2 I. C. C. 553, 567-8. In constructing the joint rates the charge per mile ordinarily decreases with the increase of the length of haul. But even where the through route and through rates are matters of express agreement between the carriers, a continuous "joint rate" does not always extend from the point of origin to point of destination. There may be, on the "through route," an intermediate point at which, in common railroad practice, the rate "breaks." That is, the "joint rate" from the point of origin ends at this "rate-breaking point" and there is charged for the distance beyond the same local rate or joint rate that would have been charged had the business originated at this intermediate point. That is, instead of a "joint through rate," there is a "combination." The so-called "Ohio River crossings" or "gateways" are among the "rate-breaking" points. See *Rates on Lumber from Southern Points*, 34 I. C. C. 652, 654; *Lehigh Portland Cement Co. v. B. & O. S. W. R. R. Co.*, 35 I. C. C. 14, 17; *Interstate Commerce Commission v. Chicago, Rock Island & Pacific Ry. Co.*, 218 U. S. 88, 90.

and on January 21, 1916, the Commission filed a report in which it found:

- (a) That the 16-cent rate to Cairo was not unduly low;
- (b) That the 22-cent rate to Paducah was unreasonable to the extent that it exceeded the existing rate to Cairo;
- (c) That the existing disparity of rates gave to Cairo an undue preference and advantage over Paducah;
- (d) That the distances to Paducah via Cairo were so much greater than the distances via Memphis "that the natural route is via Memphis rather than via Cairo";
- (e) That through routes and joint rates not higher than the Cairo rate should be established from the "blanket territory" to Paducah via either Memphis or Cairo.

An appropriate order was entered prohibiting the carriers from continuing to charge the existing rate to Paducah and directing them to establish and thereafter maintain through routes to Paducah via either Memphis or Cairo, and joint rates "not in excess of the rates at present in effect . . . to Cairo." *Paducah Board of Trade v. Illinois Central R. R. Co.*, 37 I. C. C. 719.¹

Before the effective date of the order, this bill was filed. It sets forth sixteen reasons for holding the order void; and most of them are repeated in the assignment of errors in this court. One is a charge, left wholly unsupported by evidence, that a 16-cent rate to Paducah is confiscatory. Eight deal with the sufficiency or weight

¹The log and lumber rates from blanket territory to Cairo and Paducah or competitive points had been investigated by the Commission also in earlier proceedings. *Rates on Lumber from Southern Points*, 34 I. C. C. 652; *Wisconsin & Arkansas Lumber Co. v. St. Louis, Iron Mountain & Southern Ry. Co.*, 33 I. C. C. 33; *Paducah Board of Trade v. Illinois Central R. R. Co.*, 29 I. C. C. 583; *Lumberman's Exchange of St. Louis v. Anderson & Saline River R. R. Co.*, 24 I. C. C. 220; *Chicago Lumber & Coal Co. v. Tioga Southeastern Ry. Co.*, 16 I. C. C. 323; *Central Yellow Pine Association v. Illinois Central R. R. Co.*, 10 I. C. C. 505. See also *St. Louis, Iron Mountain & Southern Ry. Co. v. United States*, 217 Fed. Rep. 80.

of the evidence before the Commission, of which there was ample to sustain its findings. Some relate to the form of the order, which was clearly appropriate. Few, only, of the errors assigned require discussion here.

First: The carriers deny that the Commission has the power to compel them to establish through routes and joint rates. It is admitted that all the complaining carriers were interstate railroads and were engaged otherwise in interstate commerce. It is undisputed that for many years there has been over the lines of two of these carriers a through route to Paducah via Cairo, and over the other a through route via Memphis; and that on all the lines there were through rates. But it is contended that if a carrier establishes a through route and joint rate with its connections, it creates in effect a relation of partnership; that this relation must be entered into, if at all, voluntarily; and that to "compel a carrier chartered by a State" to enter into such a relation with a carrier chartered in another State violates the Fifth Amendment of the Federal Constitution.

The complaining carriers having engaged in this particular commerce, it is clear that Congress has power to regulate it. *Atlantic Coast Line R. R. Co. v. Riverside Mills*, 219 U. S. 186. No reason appears why the regulation might not take the form of compelling the substitution of a joint rate for a through rate made by a combination of local rates or by a combination of a local rate with a joint rate to an intermediate point. *Cincinnati, New Orleans & Texas Pacific Ry. Co. v. Interstate Commerce Commission*, 162 U. S. 184. So far as the order relates to the existing routes via Cairo and Memphis respectively it did no more than this. It substituted for the through rate of 22 cents (made up on two of the lines of a combination of a joint rate or local rate of 16 cents to Cairo with a local rate on the Illinois Central of 6 cents from Cairo to Paducah), a joint rate of 16 cents from

the "blanket territory" to Paducah; thus reducing the existing through rate. The carrier connecting at Cairo (the Illinois Central) and all but one of the carriers connecting with these complainants in the "blanket territory" acquiesced in the order establishing this joint rate. The Illinois Central's share of the 22-cent rate was its local rate of 6 cents. If these complaining carriers cannot reach satisfactory agreements with the Illinois Central as to what its share of the 16-cent rate should be, they may, under § 15 of the Act to Regulate Commerce, apply to the Commission for an appropriate order. In respect to the Rock Island the situation is similar.

The order entered does not require any complaining carriers to substitute the route via Memphis for that via Cairo; nor does it require any to establish an additional route via Memphis. Carriers are left free to furnish the through transportation either via Cairo or via Memphis. The order merely compels a through route and a joint rate of 16 cents to Paducah. If they elect to continue the existing through route via Cairo, the order operates merely to introduce reduced joint rates. If they elect to discontinue the through routes via Cairo, the order operates to establish through routes and joint rates via Memphis, which the findings of the Commission fully justify.

That Congress has power to authorize the Commission to enter an order for through routes and joint rates, like that here complained of, has been heretofore assumed.¹ No reason is shown for questioning its existence now. The provisions of the Act to Regulate Commerce as amended (1887, c. 104, §§ 1, 12, 15, 24 Stat. 379; 1906, c. 3591, § 4, 34 Stat. 584; 1910, c. 309, § 12, 36 Stat. 539, 552) are also appropriate to confer this authority upon

¹ *O'Keefe v. United States*, 240 U. S. 294; *Interstate Commerce Commission v. Northern Pacific Ry. Co.*, 216 U. S. 538.

the Commission. And there is no foundation in fact or law for the contention of complainants that the Commission disregarded the provision of § 15, by which it is prohibited from embracing in a through route "less than the entire length" of a railroad "unless to do so would make such through route unreasonably long." Whether a carrier engaged solely in intrastate commerce could be compelled by Congress to enter interstate commerce; or even whether a carrier, having entered into some interstate commerce, may be compelled to enter into all, we have no occasion to consider;¹ for the complaining carriers had voluntarily entered into the particular class of interstate commerce with Paducah to which alone the order related.

Second: Carriers insist also that the order is void on the ground that, since their "rails do not reach Paducah, they cannot be guilty of discrimination against that city." They, however, bill traffic via Cairo or Memphis through to Paducah in connection with the Illinois Central, thus reaching Paducah, although not on their own rails. And, thereby, they become effective instruments of discrimination. Localities require protection as much from combinations of connecting carriers as from single carriers whose "rails" reach them. Clearly the power of Congress and of the Commission to prevent interstate carriers from practicing discrimination against a particular locality is not confined to those whose rails enter it. *Cincinnati, New Orleans & Texas Pacific Ry. Co. v. Interstate Commerce Commission*, *supra*.

Furthermore, the order in the case at bar is not merely

¹ But see *Michigan Central R. R. Co. v. Michigan Railroad Commission*, 236 U. S. 615, 631; *Minneapolis & St. Louis R. R. Co. v. Minnesota*, 186 U. S. 257; *Wisconsin, Minnesota & Pacific Railroad v. Jacobson*, 179 U. S. 287. Compare *Norfolk & Western Ry. Co. v. Dixie Tobacco Co.*, 228 U. S. 593, 595; *Galveston, Harrisburg & San Antonio Ry. Co. v. Wallace*, 223 U. S. 481, 491.

one to prevent discrimination. Orders to remove discrimination, as commonly framed, do not fix rates. They merely determine the relation of rates, by prohibiting the carrier from charging more for carriage to one locality than under similar conditions to another; and they usually leave the carriers free to remove the discrimination either by raising the lower rate or by lowering the higher rate or by doing both. *American Express Co. v. Caldwell*, 244 U. S. 617, 624. The order here complained of gives the carriers no such option. It directs that the rates to Paducah shall be "not in excess of the rates at present in effect from the same points or groups to Cairo, Ill." In other words, the Commission, having found the 22-cent rate unduly high, reduces it to 16 cents, by establishing joint through rates. The injury resulting from discrimination was doubtless the reason which induced the Paducah Board of Trade to institute the proceedings; and the Commission may have considered the existence of the lower rate to Cairo persuasive evidence that the 22-cent rate to Paducah was unreasonably high and the resulting discrimination strong reason for establishing the 16-cent joint rate. But the order is strictly one under § 15 of the Act to Regulate Commerce to reduce existing through rates by establishing joint rates or, in the alternative, to establish new through routes with joint rates. It is not primarily an order to remove discrimination in violation of § 3.

Decree affirmed.